

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Civil No. 07-5325(JLL)

- - - - -X
BARRY HALL, et al., : TRANSCRIPT OF
Plaintiffs, : PROCEEDINGS
-vs- : June 29, 2010
AT&T MOBILITY, f/k/a, :
CINGULAR WIRELESS, LLC, et al., :
Defendants. : Newark, New Jersey
- - - - -X

B E F O R E:

THE HONORABLE JOSE L. LINARES,
UNITED STATES DISTRICT COURT JUDGE

Pursuant to Section 753 Title 28 United States Code, the
following transcript is certified to be an accurate record
as taken stenographically in the above-entitled proceedings.

s/Phyllis T. Lewis, CCR, CRCR

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HAROLD PETER SCHROER, PRO SE

1 THE CLERK: All rise.

2 THE COURT: Good afternoon.

3 Please be seated.

4 All right. This is in the matter of Barry Hall, et
5 al. Versus AT&T Mobility, also known as Cingular Wireless,
6 LLC, et al.

7 Counsel, your appearances for the record, please.

8 MR. CECCHI: Good afternoon, your Honor.

9 James Cecchi on behalf of the plaintiffs in the
10 class.

11 With me today is my co-counsel in this matter,
12 Brian Strange, from Strange & Carpenter.

13 MR. STRANGE: Good afternoon, your Honor.

14 THE COURT: Good afternoon.

15 Yes?

16 MR. CONNOLLY: Good morning, your Honor.

17 William Connolly from Drinker, Biddle & Reath for
18 defendant, AT&T Mobility.

19 With me today is my colleague, Jennifer Green.

20 THE COURT: Good afternoon.

21 MR. LAVERY: Your Honor, Mark Lavery appearing for
22 objector, Christopher V. Langone.

23 I have filed a motion for admission pro hac vice
24 and tendered a copy to your clerk.

25 MR. ANTONELLI: Good afternoon, your Honor.

1 Joseph Antonelli. I am appearing on behalf of the
2 Dias plaintiffs in a Los Angeles Superior Court action as
3 ETF counsel.

4 I also submitted a pro hac vice application as
5 well.

6 THE COURT: I will deal with that momentarily.

7 MR. SCHROER: H.P. Schroer --

8 THE COURT: Wait one second, please.

9 You may be seated, Counsel, please.

10 Yes, sir?

11 MR. SCHROER: -- H.P. Schroer. I am here on
12 behalf of myself and to the objection.

13 THE COURT: Thank you very much, sir.

14 Anybody else?

15 No.

16 All right. Let me go through some preliminaries
17 for the record.

18 This is a class action matter. It involves a claim
19 by the plaintiffs that the early termination fees, which I
20 am sure will be called "ETFs" during the course of this
21 hearing charged by AT&T Mobility or "ATTM" violate, among
22 other things, the Federal Communications Act and State
23 Consumer Protection laws.

24 ETFs constitute a fee that is charged to customers
25 of the mobile phone company for cancellation of their

1 wireless service at any time after a trial period, but
2 before the end of the service plan term regardless of the
3 reason for the cancellation.

4 The plaintiff in this case, Mr. Barry Hall, is a
5 citizen of California. He had a subscriber agreement with
6 AT&T, which contained an ETF provision, and he was, as I
7 understand it, also ultimately charged an ETF.

8 This matter began back in November of 2007 when a
9 lawsuit was filed in this court.

10 Subsequent to that, there was some discovery and
11 motion practice, including a motion by the defendant here,
12 to compel arbitration, which I denied back in March of 2009.

13 Thereafter, the parties entered into settlement
14 negotiations through mediation, et cetera, which culminated
15 in the parties making an application for a preliminary
16 approval of the settlement, which I granted back in November
17 of 2009. At that time I granted preliminary approval for
18 the settlement, as well as the formal notice to this class.

19 Subsequent to that, on April 2nd, 2010, I amended
20 the order to reschedule the date of the final approval
21 hearing and other related dates, and eventually this matter
22 was scheduled for today for the final approval hearing.

23 I have received and reviewed briefs from both
24 sides, from both the class action attorneys and as class
25 action counsel, as well as the defense attorneys in this

1 case.

2 I have also received opposition to the settlement
3 from a number of individual objectors that are not
4 represented by counsel, as well as objectors that are in
5 fact represented by counsel.

6 Mr. Schroer, who is here in court today, had
7 contacted my law clerk and indicated a desire to be heard.
8 I told him that he would be, and we will hear from him today
9 at sometime during the hearing.

10 In addition to that, we do have two applications
11 for two attorneys to be admitted pro hac vice in this
12 matter. One is that of Mr. Joseph Giuseppi, Joseph
13 Antonelli, and I had received that, and I am inclined to
14 grant that for the purposes of this hearing.

15 Mr. Cecchi do you have any objection to that?

16 MR. CECCHI: I do not, Judge. I reviewed Mr.
17 Antonelli's application. I note him to be a lawyer in good
18 standing, and we have no objection.

19 THE COURT: Mr. Connolly, the same question.

20 MR. CONNOLLY: No objection, your Honor.

21 THE COURT: All right. I will grant Mr.
22 Antonelli's application to be admitted pro hac vice for the
23 purposes of this hearing.

24 In addition to that, I received a notice of motion
25 for a pro hac vice admission filed today. I am not crazy

1 about that, but in any event, it is by attorney Mark Lavery
2 of the Lavery Law Firm from the State of Illinois, who
3 represents previously a pro se objector, Christopher
4 Langone.

5 Any objections to Mr. Lavery being admitted pro hac
6 vice for the purposes of this hearing?

7 MR. CECCHI: Judge, we received, Mr. Strange and I,
8 the pro hac vice admission about ten minutes ago in the
9 attorney conference room.

10 I reviewed it. Based upon the assertions that are
11 contained in there, we would have no objection to Mr. Lavery
12 making a presentation to the Court today. However, I will
13 reserve my rights because I am not familiar with him, and we
14 just did get this application.

15 THE COURT: Mr. Connolly?

16 MR. CONNOLLY: No objection, your Honor.

17 THE COURT: Mr. Lavery --

18 MR. LAVERY: Yes, your Honor.

19 THE COURT: -- Mr. Lavery, why the late
20 application?

21 MR. LAVERY: Your Honor, I tried to coordinate with
22 your office to get an ECF password. I am an ECF filer in
23 the Northern District of Illinois, and I learned the
24 procedures here are different, and therefore, I would have
25 to paper file.

1 We had sent a notice of intent to appear last week,
2 but obviously logistically it was easiest for me to
3 physically file the motion today upon being here rather than
4 travel to New Jersey last week.

5 THE COURT: The problem with that is that normally
6 when I receive applications pro hac vice like yours, we do
7 some preliminary things to determine whether or not to admit
8 you, like we did with the other attorney, one of which is,
9 of course, to insure that you are a member in good standing
10 of the bar of the State of Illinois and that your client has
11 standing in this case.

12 Now, he was already an objector here, so I am not
13 going to take issue with it, and I want to be nice to the
14 State of Illinois as well. So to the extent that you have
15 represented to the Court that you are a member in good
16 standing and that you in fact have no problems, which would
17 prevent your admission pro hac vice in this court, based on
18 that representation, I will allow it.

19 MR. LAVERY: Thank you very much, your Honor.

20 I am here with Mr. Langone in court. He is here as
21 well.

22 THE COURT: All right.

23 So I will sign both of those now, so they can get
24 filed. Today is the 29th.

25 THE CLERK: Yes.

1 THE COURT: Mr. Antonelli, did you submit a
2 proposed form of order?

3 MR. ANTONELLI: Yes, I did, your Honor. I do have
4 a copy with me.

5 THE COURT: Could you hand it up to my law clerk
6 because I don't see it in the file.

7 Mike, get me a copy, please.

8 (Document handed to the Court)

9 All right. Now, that that is out of the way, we
10 can continue with this matter.

11 The Court has jurisdiction in this matter pursuant
12 to 28 United States Code Section 1332(d) inasmuch as it is a
13 class action involving more than a hundred members, at least
14 one of the class members resides in a state different than
15 the defendant, and the aggregate amount of controversy
16 exceeds \$5 million as a basis for jurisdiction.

17 The Court has received a number of objections in
18 this matter, in fact, 22 of them. Some of those objectors
19 are represented by counsel, and some are proceeding pro se.

20 There is only one pro se objector here today, and
21 he will be given an opportunity to be heard today. The
22 other ones have submitted letters in this matter, which the
23 Court will consider, notwithstanding the fact that they are
24 not here.

25 We also have objectors that are represented by

1 counsel. Those objectors have originally been put into
2 three categories. We have the Harter objectors represented
3 by Vincent Verdiramo. Is Mr. Verdiramo in court?

4 He is not.

5 Has anybody heard from him?

6 MR. CECCHI: We have not, your Honor.

7 THE COURT: All right.

8 He has submitted papers in connection with this
9 matter, all of which I have read. I would have given him an
10 opportunity to be heard, should he have appeared here today,
11 but he is not here. He represents what I call the Harter
12 objectors, which are composed of Joni Harter, David Mehaffie
13 and Clark Brown.

14 There are also the Turner objectors, which are
15 represented by Jeff Weinstein.

16 Is he here, Mr. Weinstein?

17 MR. CECCHI: Mr. Weinstein is not here, your Honor.

18 THE COURT: Do you know if he is coming?

19 MR. CECCHI: We have not had any communications
20 from Mr. Weinstein.

21 THE COURT: All right. He represents Sallie Turner
22 and Carla Walsh.

23 I also have the Olson objectors represented by
24 Vincent Verdiramo as well.

25 Is that right, Mike, he represents two groups of

1 objectors?

2 All right.

3 The Olson objectors are composed of Carl Olson and
4 Hugh Ramsey.

5 Now, of course, we have the other two objectors
6 that will be represented by counsel here today.

7 The procedure that I would like to follow is as
8 follows: I am going to have class counsel first and then
9 defense counsel set forth their application on the record
10 and the reasons why you believe the settlement should
11 receive final approval.

12 Thereafter, without the necessity of addressing the
13 objectors at this point, thereafter I will hear from the
14 objectors. First, the objectors represented by counsel that
15 are here, and then I will hear from Mr. Schroer, and then
16 anybody else that shows up while the hearing is still going
17 on. Then I will give an opportunity to both class counsel
18 and the defense to address the objections. The Court will
19 then in all likelihood reserve decision to deal with this.

20 I will hear arguments on the adequacy of the
21 settlement and the reasonability of the settlement, but I am
22 not going to hear argument on attorneys' fees today. I have
23 received enough documentation for me to deal with that on
24 the papers. I mean, you can mention it obviously as part of
25 the approval, but I don't need to hear oral argument on

1 that. I will have to do my analysis of that including the
2 lodestar and everything else.

3 Is there a problem with that, Mr. Cecchi?

4 MR. CECCHI: No, there isn't, your Honor.

5 THE COURT: Any problem with that, Mr. Connolly?

6 MR. CONNOLLY: No, your Honor.

7 I would just like to state for the record with
8 respect to counsel who are not here today, counsel for the
9 Harter objectors had represented in a filing, docket entry
10 531, that he would not be coming today.

11 THE COURT: But even though they said that, I
12 wanted the record to be clear that if they had come, I would
13 have given them an opportunity, but I have received
14 information from them anyway that they may not be coming, so
15 that is the way I would like to proceed.

16 Mr. Cecchi, we will hear from you first on the
17 reasonableness of the settlement, and why it meets the Girsh
18 factors, and then I will hear from the defense and go from
19 there.

20 MR. CECCHI: Thank you, your Honor.

21 With the Court's permission, I would just briefly
22 make an introductory remark about this particular AT&T case.
23 All of these ETF cases are similar, but there are
24 distinguishing factors I think which make our efforts, Mr.
25 Strange's and mine and Bill's somewhat unique in this case,

1 in that as in the other cases, T-Mobile and Sprint, there
2 were ETF cases pending around the country in various stages,
3 in various places, various stages of success, where many of
4 the lawyers who we had previously attempted to bring into
5 our class counsel umbrella decided to go a different route.

6 In this case what is unique is you got the vast
7 majority of all of the lawyers, who were prosecuting cases
8 against AT&T Mobility on the theory that these have as a
9 liquidated damage provision and are supporting the
10 settlement and are supporting the fee application, and those
11 include -- all of the lawyers included advanced the cell
12 phone termination cases in Alameda County, Mr. Bursor, Mr.
13 Plutzik and Ms. Mottek. They all joined us in their
14 assessment and our assessment that this is an outstanding
15 deal with AT&T, and that this settlement respectfully should
16 enjoy final approval from your Honor, as should the fee
17 application, so I did want to put that on the record first.

18 It has taken some time and effort to do that, but
19 they are all behind the settlement, so hopefully that will
20 make this process somewhat more expedited than we had in the
21 past.

22 In terms of the overall fairness of the settlement,
23 your Honor is very well aware of the precedents that support
24 the fairness of this settlement. I would ask with the
25 Court's permission, Mr. Strange would like to address your

1 Honor as to why under Girsh this particular settlement
2 should enjoy final approval as well.

3 THE COURT: All right, Mr. Strange.

4 MR. STRANGE: Thank you, your Honor.

5 This settlement concludes many years of litigation
6 against the defendant AT&T Cingular regarding the use of
7 ETFs and telephone service contracts.

8 The proposed resolution involves not only the Hall
9 case before your Honor, but the Waldmann versus Cingular
10 case and the Sasik versus AT&T case, which is currently
11 pending in consolidated cases before Chief Judge Collins in
12 the Central District of California.

13 It also includes resolving the in re telephone
14 cases before Judge Sabraw in Alameda County and the Kinkel
15 versus Cingular case in Illinois, all of which have
16 significant histories of litigation.

17 With respect to the Waldmann case, your Honor, it
18 was first filed over six years ago --

19 THE COURT: Where was Waldmann filed?

20 MR. STRANGE: It was initially filed in the Florida
21 State Court in May of 2004. There were two separate removal
22 proceedings to the Federal Court. It ultimately was
23 removed. During the pendency of those removal proceedings,
24 there were various hearings in State Court, various
25 discovery disputes that happened. There was depositions of

1 the representative plaintiffs in Kentucky and Los Angeles.

2 Ultimately, it was transferred to the Central
3 District of California after it was removed from Florida and
4 consolidated with the Sasik case in Los Angeles.

5 Initially, a primary jurisdiction stay was granted
6 in that court by Judge Collins. It was ultimately lifted at
7 our request. There was a substantial preemption motion,
8 which was denied without prejudice, and then Judge Collins
9 did something, which has not happened in any of these cases,
10 to my knowledge, in which she allowed expedited discovery on
11 the policy and procedures of AT&T to determine whether as a
12 factual matter, there should be a preemption ruling in that
13 case.

14 So during the expedited discovery process, over a
15 million pages of documents were produced to us by AT&T, all
16 of which we reviewed.

17 We then took two major depositions of officials of
18 AT&T regarding their policy and procedures on ETFs.

19 We then had what was in effect a summary judgment
20 type of hearing before Judge Collins, where ultimately she
21 issued a decision denying a request that the action be
22 deemed preempted.

23 Similarly, in the Sasik case, that was filed in
24 March of 2005 in the Central District, there were two
25 separate motions to compel arbitration that were denied.

1 There was an appeal to the Ninth Circuit by AT&T,
2 which was ultimately dismissed. And in that case we also
3 had class discovery, including the representative plaintiffs
4 being deposed.

5 In the telephone cases, they were consolidated in a
6 State Court proceeding before Judge Sabraw. I know your
7 Honor is familiar with that, but just to summarize vis-a-vis
8 AT&T, there were years of litigation in that case including
9 class discovery, and ultimately that case against AT&T was
10 certified as a California class after a hearing.

11 There were substantial FCC proceedings in
12 Washington, which was also concluded or involved in the fee
13 application here, and with respect to the Sprinkle case --
14 the Kinkel case, excuse me, in Illinois, there were years of
15 litigation in that case, including the arbitrator denying a
16 motion to compel arbitration, the defendant bringing that
17 issue to the State Court in Illinois, appealing it to -- all
18 the way to the Supreme Court in Illinois, because there is a
19 published decision holding that the action was not
20 enforceable in the Kinkel case.

21 So after all of these years of litigation, your
22 Honor, we ultimately retained Judge Wolfson here in New
23 Jersey and had two full days of mediation regarding coming
24 to a classwide resolution, a nationwide resolution here.
25 Those two days of negotiations didn't settle the case.

1 There were numerous calls and negotiations afterwards, which
2 ultimately resolved it in the settlement.

3 THE COURT: This is Judge Douglas Wolfson, right?

4 MR. STRANGE: Yes, your Honor.

5 THE COURT: Because there is more than one Judge
6 Wolfson in New Jersey, so I just wanted to make sure the
7 record indicates that it was Douglas Wolfson, Ex-Judge
8 Wolfson, that was retained.

9 MR. STRANGE: Yes, your Honor.

10 So ultimately --

11 THE COURT: So how long did you mediate with Judge
12 Wolfson?

13 MR. STRANGE: There were two full days of mediation
14 on two separate occasions, one day per occasion, and then
15 numerous calls of negotiations, but I am not sure of the
16 total length, somewhere around two or three weeks.

17 When the resolution did happen, when we agreed in
18 principle on the settlement, ultimately all of the firms,
19 save one, who is Mr. Dias' counsel who is here, Mr.
20 Antonelli, but 17 firms were involved in the ETF litigation
21 process in support of the settlement, and those are the ones
22 listed in our fee application and settlement approval.
23 These are the lawyers that know these issues all well and
24 the pitfalls and the strengths of this litigation.

25 With respect to the settlement, it was a hard

1 fought negotiation. There are certain things unique to
2 AT&T, which are different than some of the other defendants,
3 not only their policy and procedures with respect to ETFs,
4 but they had a different size of an ETF as to some of the
5 carriers. Their ETF was a hundred-fifty or a
6 hundred-and-seventy-five depending on the jurisdiction.

7 T-Mobile's, for example, was 200. Sprint's was 150
8 to 200, and Verizon was 175, so that the size of ETFs made a
9 difference.

10 Also, AT&T had many markets in which it actually
11 had a prorated ETF during the class period, so all of those
12 factors were considered in terms of the settlement. The \$18
13 million that they had agreed to pay we think compares
14 favorably to the T-Mobile settlement of which was 13 and a
15 half million, and Sprint's was 17 and a half, and the
16 largest carrier, Verizon, was 22 million.

17 With respect to the AT&T settlement, as your Honor
18 knows, it is 16 million in cash, which is no reversion. It
19 either goes to the class, or if any is left over, it is
20 going to cy pres, not to the defendant. It's \$2 million in
21 calling cards.

22 Just to clarify that, with respect to the 2
23 million, that is the retail value. Each card has 200
24 minutes. The retail value is 14 dollars, so up to 2 million
25 can be claimed based on the retail value, and that is

1 significantly greater than somewhat -- some of the other
2 settlements --

3 THE COURT: You said up to 200 million or 2
4 million?

5 MR. STRANGE: 2 million, excuse me.

6 They have agreed to a two-year injunction against
7 the flat rate ETFs, and they have agreed with respect to the
8 subscriber class that they have the ability to convert from
9 the flat rate ETF to a pro rata ETF, should they choose.

10 Those latter parts of this settlement, the two-year
11 injunction and the ability to convert are not -- although
12 they are worth we think substantial sums, they weren't
13 considered in the 18-million-dollar figure.

14 With respect to the notice program, your Honor, I
15 think Mr. Connolly can better speak to that, but suffice it
16 to say that we considered other settlements, and that we
17 think this notice program is as good, if not better, than
18 any of the other notice programs. We sent out over 27
19 million individual notices, 25 million --
20 25-million-900-something-thousand in the invoice is included
21 in that --

22 THE COURT: How many?

23 MR. STRANGE: 25,978,568.

24 And, your Honor, we also -- at some point AT&T
25 discovered they had not sent out Spanish notices, so we

1 actually continued this hearing, and we sent out 729,000
2 notices in Spanish. So after that substantial notice
3 program, we only received 23 objections, which we think we
4 have addressed in our papers.

5 With respect to the Girsh factors, your Honor, the
6 first one being the complexity and duration of the cases, I
7 think that was covered in my initial remarks. Suffice it to
8 say that over six years of litigation and very complex
9 issues with respect to arbitration that occurred in the AT&T
10 case, so the stage of the proceedings has advanced.

11 As I indicated, one of the cases, the State Court
12 cases, actually have been certified. But probably one of
13 the more significant issues, which your Honor is well aware
14 of, is that in a liquidated damage case, to the extent that
15 we proved that this penalty is illegal, AT&T has a claim for
16 damages as against the class members.

17 In fact, in my Waldmann case they had asserted
18 counterclaims. We know based on history with respect to the
19 Ayyad versus Sprint case, that the jury in fact returned
20 damages that arguably were greater than the damages assessed
21 against the defendant.

22 So there were substantial risks to the class of
23 getting nothing, should this case proceed. There is still a
24 substantial risk with respect to arbitration, your Honor.
25 One thing not noted here, notwithstanding our victory, is

1 that the U.S. Supreme Court has recently accepted cert on a
2 case dealing with the issue of arbitration, and we -- I
3 believe it was AT&T -- so that issue is not entirely to bed,
4 although I would like to tell you that it is. So that was
5 still a risk for the class, and then establishing damages is
6 also a tricky issue in this case.

7 So when you consider all of those facts together
8 and the fact that AT&T had various policies with respect to
9 implementing the --

10 THE COURT: What?

11 MR. STRANGE: -- had various policies with respect
12 to where they implemented the ETF, whether flat or pro rata,
13 we think this is an excellent settlement for the class. And
14 I personally have been litigating these types of classes for
15 25 years, and in my opinion, Judge Wolfson did an incredible
16 job in putting this together with AT&T and Mr. Cecchi's
17 assistance. We think this is a settlement that should be
18 approved, and it is an excellent result.

19 Thank you, your Honor.

20 THE COURT: Mr. Connolly?

21 MR. CONNOLLY: Thank you, your Honor.

22 William Connolly for defendant, AT&T Mobility.

23 Your Honor, we wrote quite a bit about the notice
24 program in our briefing, so I won't go through every element
25 unless your Honor has specific points you want me to hit,

1 but I would just like to pick up on what Mr. Strange said
2 and just highlight two instances in which we felt our notice
3 program was stronger than the other settlements that you
4 have previously given final approval to, the Sprint and
5 T-Mobile settlements, the Sprint settlement being in this
6 same action, and the T-Mobile settlement being in the
7 Milliron action also before your Honor.

8 With respect to the Sprint settlement, your Honor,
9 your Honor may recall there was some question as to what
10 work Sprint could do by way of identifying former customers
11 to receive direct notice.

12 I am a little bit by Plato's cave because I
13 couldn't see some of the under seal declarations that got
14 bandied around a bit, but I saw what your Honor said about
15 them. I guess there was a question as to whether Sprint
16 could do that work.

17 T-Mobile did do that work, and we are akin to
18 T-Mobile in that we went into our billing system to identify
19 additional people to get direct notice, so that is one
20 respect in which I would say that our program was stronger
21 than Sprint's. Again, not to criticize Sprint's, but just
22 to say we stand a little bit higher.

23 Second, with respect to T-Mobile, our publication
24 notice plan is a little stronger as evidenced by Tiffaney A.
25 Allen, Rust Consulting's declaration, in that we substituted

1 "USA Weekend" for "USA Today," which resulted in greater
2 circulation and greater reach of the settlement.

3 Also, with respect to the bill insert portion of
4 the notice program, I believe the T-Mobile settlement
5 restricted that to certain customers within their current
6 subscriber base, and we sent it to all of our customers who
7 received bills from us, both paper bill inserts, the people
8 who received their bills in paper, and by emails to
9 customers who received their bills electronically. That is
10 with respect to notice.

11 Just a few minor items, your Honor. Your Honor had
12 asked about the duration of the mediation. Our two sessions
13 with Judge Douglas Wolfson were August 11th and August 27th.
14 Then there were also phone calls with him in between those
15 two dates, and then after those dates before filing, I think
16 it was September 15th, if I remember correctly, was the day
17 that we filed the settlement papers and a motion for
18 preliminary approval with your Honor.

19 Your Honor, also to pick up on something Mr.
20 Strange said just about what we viewed as different factors
21 in our case with respect to defending against these claims,
22 and again, we are settling and not trying the case, so I
23 will spare you my closing argument unless you would like it.
24 But the significance of the fact that our ETF was less than
25 other carriers in just absolute dollar terms, is that, as

1 Mr. Strange said, there is a right to recover actual damages
2 in the event an early termination fee would be invalidated,
3 and with a lower dollar ETF than other carriers, we would
4 have a lower hurdle before our actual damages were more than
5 the amount of the ETF charge, so that is the significance at
6 that point in our view.

7 Another point just with respect to the prorated
8 ETF, Mr. Strange mentioned that that was a significant
9 factor in our defense simply because it made our class
10 smaller.

11 We were unique among all of the national carriers,
12 and that for a great portion of the class period, we
13 actually had two different ETF policies in the United
14 States.

15 We had a number of markets, almost half of the
16 country, where we had a prorated ETF, and then we had the
17 rest of the country, our customers had flat ETFs. And flat
18 ETFs are the ETFs that have been challenged in all of these
19 cases that your Honor has heard about in our settlement and
20 the cases that preceded us in this court. None of those
21 cases have ever dealt with prorated ETFs.

22 So, again, just in terms of how big was the case
23 against us, we had a large number of our customers who just
24 simply were not part of it as opposed to other carriers.

25 With respect to the benefits, again, we laid it out

1 in the briefing, so I won't rehash it all, but there is
2 strong individual benefits. They have value, both monetary
3 benefits and non monetary benefits. I would say, again,
4 similar to T-Mobile. I had the benefit of watching and
5 learning as these two cases preceded us in this court, and
6 similar to T-Mobile, we offered, which Sprint could not, the
7 opportunity to convert to a prorated ETF.

8 Your Honor, you didn't want to hear about
9 attorneys' fees today, and I won't have much to say about
10 them in any event on my side of the aisle here, but I will
11 just note under that the preliminary approval order and the
12 settlement agreement, this Court and your Honor is the
13 exclusive forum for resolving attorneys' fees issues for
14 class counsel and ETF counsel.

15 In our briefing, your Honor, finally just two
16 points. As your Honor has seen, these cases are not
17 necessarily over before or after your Honor makes a final
18 ruling on final approval. There have been motions for
19 injunction in each of the two settlements that preceded this
20 case. We have already filed one with respect to the
21 Colisimo action. That case was then voluntarily withdrawn
22 by those counsel, the Faruqi & Faruqi firm, and Scott
23 Bursor, who are part of the settlement, have joined in it.
24 They filed a case which is covered by the settlement.

25 Although our motion for injunction was mooted by

1 the fact they voluntarily dismissed the case, I have heard
2 nothing to suggest they won't simply bring it once final
3 approval is granted, and we could come back at that time and
4 have that injunction fight, but those issues are before your
5 Honor. The briefing is before your Honor. I would ask your
6 Honor to take a look at it and clarify your final approval
7 order that this settlement does not distinguish on the basis
8 of what device the customer contracted for that had a flat
9 ETF associated with it.

10 We made an argument in our final approval papers.
11 In addition to our previous injunction papers, we served it
12 on counsel in the Colisimo case, who are also ETF counsel,
13 joined in the settlement, so they would know that I planned
14 to show up here today and say it, and now I have, your
15 Honor.

16 Lastly, your Honor, a second issue like that is we
17 have a young gentleman, Mr. Velez-Colon in Puerto Rico --

18 THE COURT: In Puerto Rico, right.

19 MR. CONNOLLY: -- and who has, to be charitable,
20 had a bad experience --

21 THE COURT: Wait a minute. Let's go back.

22 The settlement does not distinguish based on the
23 type of equipment that was being used, is that what you are
24 saying --

25 MR. CONNOLLY: Yes, your Honor.

1 THE COURT: -- the Blackberry type thing or a cell
2 phone, is that what you are --

3 MR. CONNOLLY: Exactly, your Honor.

4 The premise of the Colisimo lawsuit was that -- if
5 you would excuse me, your Honor, I just wanted to grab
6 something out of my bag.

7 THE COURT: Okay.

8 Does the settlement agreement, though, address that
9 issue --

10 MR. CONNOLLY: The cell --

11 THE COURT: -- or is it silent?

12 MR. CONNOLLY: It is silent. It does not speak in
13 terms of what devices are or are not covered.

14 It just says anybody who has had a wireless
15 telephone account with AT&T Mobility, who has had a flat
16 rate ETF, correspondingly the release, your Honor, talks in
17 terms of releasing all claims relating to ETFs in fixed term
18 subscriber agreements. And the Colisimo case, your Honor,
19 suggested that it would be a class action only on behalf of
20 people who had this device I am holding in my hand, which is
21 a wireless laptop card. You put this into the side of your
22 laptop computer, and it lets you use the internet over a
23 wireless network as opposed to an overall Wifi network or,
24 you know, plugging it into the wall in your office.

25 What we showed in our papers in the Colisimo case

1 through declarations and the exhibits and the contractual
2 documents of Mr. Colisimo himself is that AT&T has one kind
3 of account regardless of device.

4 Mr. Colisimo himself had contracted both for
5 phones -- this is an iPhone. He had contracted for a
6 Blackberry. He had contracted for a wireless data card.
7 All of those have the same kinds of contracts. All of those
8 have wireless telephone numbers associated with them. And
9 actually what we also showed in our papers, and I won't bore
10 you with the demonstration today, but there are little cards
11 in all of these that are interchangeable, so that I could
12 actually take the card out of this - and Jen and I actually
13 did it in the attorney conference room before we came in
14 here today - and I could take the card out of here and pop
15 it into this phone and make calls with the phone number that
16 is associated with this.

17 So that devices are actually interchangeable. And
18 once you've signed up for an agreement, and again, we showed
19 this in our declarations, there is no -- AT&T does not track
20 what device you are using, nor does the fact that you may
21 change devices change your underlying term contract, so that
22 is the Colisimo issue, your Honor.

23 THE COURT: Okay.

24 MR. CONNOLLY: Then with respect to Mr.
25 Velez-Colon, he has filed a lawsuit in Puerto Rico

1 originally arising out of a bad customer experience with
2 T-Mobile, but then at some point has added allegations on
3 behalf of classes against every major wireless carrier, and
4 I think I am just the first to come see you, your Honor,
5 since he has done this.

6 In our experience, our limited experience with him
7 so far, is we have seen that he has been willing to dismiss
8 defendants who have been improperly joined, if somebody can
9 show him a basis to do that.

10 He has dismissed some other defendants, not the
11 ones that have been before your Honor, but some other
12 wireless telephone companies. Our hope is that rather than
13 having to come back to you with an injunction application
14 down the road, if we could just simply show him that, yes,
15 this has been addressed and Puerto Rico customers are being
16 included in this class, that that might be enough to help us
17 avoid that application, and on that front --

18 THE COURT: Wait, wait.

19 What would you expect the Court to do, to find
20 that, I guess in your world, you would want me to say that
21 this settlement includes all current and former AT&T
22 subscribers, right, that contain a flat ETF?

23 MR. CONNOLLY: That's right, your Honor.

24 THE COURT: Regardless (a) of what device that is,
25 the other case --

1 MR. CONNOLLY: That's right.

2 THE COURT: -- and then that that class of people
3 includes the Puerto Rico customers as well?

4 MR. CONNOLLY: That is right, your Honor. They are
5 included.

6 And on that count, your Honor, we disseminated
7 notice in Puerto Rico.

8 THE COURT: I note that you received claims, right?

9 MR. CONNOLLY: We have received claims from Puerto
10 Rico. I have reviewed exclusion requests from Puerto Rico.

11 I will be honest. My Spanish is at Sesame Street
12 level, so I couldn't tell you everything they say. That is
13 the claims administrator who translates them, but I can
14 recognize Puerto Rico addresses and exclusion requests, and
15 we have received those. We are processing claims from them.
16 You know, we would intend to continue to do so.

17 THE COURT: So it includes all Puerto Rico
18 customers. You are requesting the Court to indicate in its
19 final approval opinion, if I do approve it, that it includes
20 all Puerto Rico customers that fall into the definition of
21 the class.

22 MR. CONNOLLY: That's right, your Honor.

23 THE COURT: You are not asking for an injunction at
24 this point, because you expect that what will happen then is
25 that he will withdraw --

1 MR. CONNOLLY: My hope would be that I would go to
2 him and say -- he has given us an indication, if you can
3 show me that this is not a proper claim for me to be
4 asserting, I will withdraw it.

5 Independent of that, I have seen other defendants
6 he has withdrawn as to them, so I have some hope that he is
7 capable of having a dialog with us.

8 THE COURT: Because he has other claims he wants to
9 pursue, it doesn't necessarily have to be an ETF.

10 MR. CONNOLLY: Oh, understood. Although, your
11 Honor, the only claims he is asserting against my client,
12 AT&T Mobility, are ETF claims.

13 He has a separate set of claims relating to his
14 experiences with T-Mobile, and those are in this complaint,
15 and I'm not -- that is not my issue.

16 THE COURT: Is he pro se?

17 MR. CONNOLLY: I'm sorry?

18 THE COURT: Is he pro se?

19 MR. CONNOLLY: He is pro se, your Honor.

20 THE COURT: Okay. Thank you.

21 Anything else?

22 MR. CONNOLLY: No, your Honor.

23 Thank you.

24 (Court and Clerk confer)

25 THE COURT: Okay.

1 State your name for the record and who you
2 represent.

3 MR. ANTONELLI: Good afternoon, your Honor.

4 Joseph Antonelli on behalf of the Dias plaintiffs,
5 the Los Angeles Superior Court action.

6 Your Honor --

7 THE COURT: Wait, wait, wait, wait, wait.
8 Plaintiffs in Los Angeles?

9 MR. ANTONELLI: Yes.

10 THE COURT: Just bear with me one second.

11 Is Mr. Dias either a member of the class, or does
12 he have standing is what I am getting at.

13 MR. ANTONELLI: Yes. It's Ms. Dias. She has --

14 THE COURT: How does she qualify as a member of the
15 class?

16 MR. ANTONELLI: She was an AT&T customer, and she
17 was also assessed an ETF --

18 THE COURT: So she paid it?

19 MR. ANTONELLI: Actually I can't recall. I have
20 two clients, both Ms. Dias and Ms. Day, and they were
21 both --

22 THE COURT: She was either assessed an ETF or paid
23 an ETF?

24 MR. ANTONELLI: That's correct, and they both
25 received a notice package and have not objected. I am not

1 here as an objector, your Honor.

2 THE COURT: Okay.

3 MR. ANTONELLI: Your Honor, my position is that
4 we -- according to the settlement agreement, you know, our
5 case was an ETF related case, so we submitted our fees and
6 costs package to Mr. Strange and Mr. Cecchi, which we did.
7 We submitted everything timely and, you know, we -- I have
8 been kind of frustrated, and I explained that to both
9 plaintiffs' counsel today because they basically ignored my
10 request to talk and to try to work something out.

11 I notice Mr. Strange said he worked out an
12 agreement with everybody, but he never has even spoken to
13 me, and that was my main contention, and the only reason I
14 flew out from California is because I felt like I was being
15 ignored.

16 We had spent seven years litigating the case. We
17 have got a substantial amount of time into it, over 1500
18 hours, which would be a lodestar of 890,000 in costs of over
19 41,000, which the cost has gone up now because of the trip
20 out here.

21 When I had a conversation with Mr. Cecchi probably
22 about a week ago or maybe ten days ago, he was not able or
23 not willing to speak with me until Mr. Strange and I and him
24 could all get together on a conference call, and he promised
25 to call me back.

1 When I spoke to Mr. Cecchi this morning, he said,
2 "Well, I thought you were supposed to call me."

3 The bottom line is we just never spoke. I
4 submitted a lot of email correspondence that I believe is
5 Exhibit 14. It would be pushing the issue -- let's just
6 talk.

7 So I guess the biggest gripe from Dias and the Day
8 plaintiffs are the substantial amount of work. I realize it
9 is not worth \$890,000. That is not what I am asking for. I
10 explained that to Mr. Cecchi, you know, this morning or this
11 afternoon, right before the hearing for the first time the
12 three of us got to talk about this. I have faith that we
13 will work something out. We will be able to discuss this.

14 THE COURT: I think I know.

15 Why can't you talk?

16 MR. CECCHI: We absolutely can talk, your Honor,
17 and we --

18 THE COURT: Here is what I am going to do:

19 I will direct you three to have a conversation
20 within the next week or so and see if this matter can be
21 resolved. Let the Court know if it has been resolved and
22 what your proposal is, so that in the event the settlement
23 is approved, I will deal with it.

24 If you can't, I will have to make a call when I
25 decide the attorneys' fees. You made your submission.

1 Certainly I am not going to ignore you. You have a
2 litigation that has been pending. You have done work. The
3 question is the apportionment. Talk it over with counsel.

4 I am directing counsel to talk to him. Let's not
5 ignore him.

6 I assume that is the relief you wanted from this
7 Court today.

8 MR. ANTONELLI: That's correct, your Honor. That's
9 perfect.

10 Your Honor, if we could have until July 15th
11 because I do have vacation plans. When I return --

12 THE COURT: You are the one who is in a hurry to
13 talk, and now you want more time?

14 (Laughter)

15 MR. CECCHI: I am not available on July 15th, so --

16 MR. ANTONELLI: I will talk on my vacation then.

17 THE COURT: Get back to the Court by July 15th.

18 MR. ANTONELLI: Thank you, your Honor.

19 THE COURT: Okay.

20 The other attorney, please?

21 MR. LAVERY: Good morning, your Honor -- oh, good
22 afternoon.

23 THE COURT: I was going to say --

24 (Laughter)

25 MR. LAVERY: I am appearing here today on behalf of

1 Christopher Langone, L-a-n-g-o-n-e, for the record.

2 Mr. Langone is a class member in two ways. Back in
3 '03, he paid AT&T, his current wireless, with respect to
4 Account No. 003143002 --

5 THE COURT: So he paid an ETF?

6 MR. LAVERY: Yes. As part of the final settlement
7 of his bill, he was charged, assessed and paid --

8 THE COURT: What is your name again?

9 MR. LAVERY: What is that?

10 THE COURT: What is your name again?

11 MR. LAVERY: It's Mark Lavery, L-a-v-e-r-y.

12 THE COURT: Okay, Mr. Lavery.

13 MR. LAVERY: And --

14 THE COURT: I think I called you "Lavery" before.

15 MR. LAVERY: Yes.

16 THE COURT: I'm sorry about that.

17 MR. LAVERY: That is fine. That's how my
18 grandmother pronounces it.

19 THE COURT: Okay, Mr. Lavery.

20 MR. LAVERY: Your Honor, we are here today to
21 primarily object to the settlement agreement specifically,
22 not to the common fund, but to paragraph two of that
23 agreement, which is the distribution of the fund.

24 This agreement that was negotiated allows you to
25 separately enter orders with respect to the distribution

1 directly going to that. In Article 3 settlement class
2 relief, paragraph one states that what the common fund will
3 be. Paragraph two distribution of the common fund says that
4 the aggregate fees, costs and expenses shall be paid from
5 the common fund consistent with the provisions of Article 6
6 of the settlement agreement. The remainder of the common
7 fund shall be distributed pursuant to a plan of allocation
8 to be adopted by the Court separately from the approval of
9 the settlement.

10 We believe that is very important because you can
11 today approve the \$18 million. It doesn't seem like there's
12 much objection to the amount in light of the risks, which I
13 would like to say for the record, there is this new risk of
14 the U.S. Supreme Court accepting cert, and in light of
15 Rennet Center and in light of still Neilson, there are
16 serious issues, but there is also the risk, ATTM, of passage
17 of the Arbitration Fairness Act, which is pending before
18 Congress and could have retroactive applicability and
19 completely invalidate arbitration as a liability shield in
20 these types of cases. So there are risks on both sides, but
21 that is not really the substance. There is always
22 compromise in these kinds of cases.

23 But what we are talking about is since this is sort
24 of the last chance hotel, at least for ATTM subscribers with
25 respect to the ETF, we believe it is very important that

1 your Honor maximize the distribution of the common fund to
2 class members. We believe there is some rather simple
3 changes you can make to effectively do that.

4 I would first like to point out that these
5 objections that we are making today can be testified, if you
6 would like to, under oath, as part of the evidentiary
7 hearing, but they were started in its original -- Mr.
8 Langone's original objection letter.

9 I think the most important is the distribution of
10 the fund, especially with respect to cy pres and what amount
11 the plaintiffs' allocation gives.

12 What we would like you to do is get rid of the
13 damages cap - what we call the damages cap - which is in
14 this plan of allocation proposed by class counsel.

15 This would -- basically there are, as you can see
16 from their distribution, they have a chart that basically
17 where you can get from 25 to 140 based on how many months
18 there were in the time.

19 THE COURT: Right.

20 MR. LAVERY: First of all, we think that is very
21 onerous with respect to the class members --

22 THE COURT: Why?

23 MR. LAVERY: -- because this class goes back over
24 ten years, and they may not remember. They may not have
25 those records. They may have a recollection, yeah, I paid

1 it, but they don't recall or they didn't save the proof.

2 I mean, we are talking about a maximum loss of \$175
3 here. Most consumers, and we are talking about millions of
4 consumers, don't save that kind of paperwork.

5 So the thing is is that the way it is structured
6 currently, they have the burden of proof, which their lawyer
7 should be doing, not them, and then it is cross-checked by
8 the class administrator, who has got the information, so we
9 think that is a very onerous requirement and basically you
10 can simplify the claim form. That's the guidelines, the
11 National Association of Consumer Advocates talk a lot about
12 claim forms, and that simplicity is better.

13 We think here, if you send an email with a
14 certification, hey, I paid it, and then the claims
15 administrator says, yeah, they paid it, we think the
16 simplest way to distribute the fund then is pro rata, which
17 is done in many, many, many class actions.

18 There is no need for this kind of scaled work,
19 which is -- I feel it is like we are dealing with an
20 insurance company here, and it is basically set up to reduce
21 the distribution of the class and increase the distribution
22 of the cy pres, which is inappropriate under class action
23 jurisprudence, and I will get to that later, but just let me
24 talk about the structure here.

25 We got a \$16 million cash fund. Based on the prior

1 claimant, we are expecting probably around 40 to 50,000
2 claims to come in based on T-Mobile and Sprint and the
3 similar cases that have already gone through that process.

4 So the typical argument against our approach that
5 has been -- that class counsel interestingly has argued
6 against us from, and we think that presents a potential
7 conflict, but we can get into that with respect to fees,
8 which I know you want to bracket, but getting back to that,
9 the question is -- there is not going to be any kind of
10 windfall. It is very important for the Court to consider
11 the broadness of the release here.

12 You are not just giving up your ETF claim. You are
13 giving up any claim against ATTM --

14 THE COURT: Wait. You meant to the ETF --

15 MR. LAVERY: -- well, there is a dispute as to the
16 scope of the release, I believe --

17 THE COURT: Well, if you look at the language, it
18 says any claim or potential claim defense, et cetera, that
19 is related to or involving ETF, something to that effect. I
20 am not reading it. I am just going from memory.

21 MR. LAVERY: We believe the hazy area is in the
22 Alameda County litigation, they have added -- within the
23 banner of In Re Cell Phone Litigation, there is now an ATTM
24 blocking settlement going on under the banner that related
25 litigation, so to the extent of what the scope of the

1 release is here, we believe it is very unclear, but
2 nevertheless, even with respect to ETF, there is a very
3 broad release with respect to ancillary claims that could be
4 related to ETF. For example, credit damages, collection
5 agencies are assigned these debts, and they put it on your
6 credit report. One of the class members who was pro se
7 complained about that.

8 Now, if he is claiming in, he will certainly be
9 giving up any ability under --

10 THE COURT: Those claims are not included --

11 MR. LAVERY: -- to the extent they are related to
12 the ETF, they would be. If the only credit damages because
13 of an ETF late charge was put on your credit report, then we
14 think that would definitely come within the scope.

15 But there are also claims that are not ancillary
16 related or directly related that are being released for
17 statutory damages and for punitive damages. In the State of
18 New York, for example, you can get the greater of \$500 as
19 long as you have some actionable damages.

20 The point here is that there is not going to be any
21 windfall, if you get rid of their plan of allocation and do
22 what we are proposing, which is just the pro rata.

23 THE COURT: How would the pro rata work?

24 MR. LAVERY: Essentially what we would see is that
25 basically people would claim in, either electronically or

1 through paper, and then the claims administrator would just
2 make sure that it had some validity, that their records
3 checked out.

4 And then once we get all of those claims in, at the
5 end of that period, 90 days, there is a pro rata
6 distribution allowed for a pro rata amount for all people
7 who claimed into that cash fund, and that is fairly easy for
8 the claims administrator to do. It is done in many class
9 actions.

10 So at the end of the 90 days, they'd give the
11 report. They'd say there was 50,000 people. You got 16
12 million to distribute, which is our position, but we will
13 get into that later, and then you would just give the pro
14 rata share.

15 If 50,000 people claim in, there's not going to be
16 any windfall. It's not going to be more than a couple of
17 hundred dollars. It would be less than your statutory
18 damages under New York law certainly, and they are going to
19 show that there are real damages there.

20 So basically -- this will promote mutuality because
21 this is what's going to happen. Let's say there's an
22 extremely high -- let's say somebody gets on Face Book and
23 promotes this, and we get a hundred-thousand or 200,000.
24 Then there is a pro rata reduction already structured into
25 the agreement, so there's -- and then if you get five

1 dollars, if it reduces down to five dollars, people get no
2 cash. It all goes, I believe, to cy pres or cards. I am
3 not sure how it works.

4 But the point is, let's say that the threshold gets
5 down to \$21 for everybody, even the people who would have
6 qualified for 140, there is just a pro rata reduction at
7 that point, so it is already structured in.

8 We want mutuality. If it's 50,000, it should all
9 go to them rather than cy pres. If there's less or if
10 there's more than the agreement already contemplates, then
11 they're going to get a pro rata smaller reduction.

12 The policy justifications for a cy pres are
13 completely absent in this case. Cy pres is inconsistent
14 almost always with a claim in the settlement because you
15 know exactly who is getting the money and exactly who was
16 damaged, and there is really no issue except for the issue
17 of like unclaimed checks. Sometimes if you gave out checks,
18 and nobody cashed the checks, then maybe sometimes a cy pres
19 remedy at that point could be appropriate. But that is
20 probably what's not going to happen here based on what we
21 have seen in Sprint and the other cases.

22 If I can get you some -- there is some really good
23 case law from the 7th Circuit on this issue for your
24 reference, Simer vs. Rios, S-i-m-e-r, v. Rios, 661 F.2d,
25 655. That is from the 7th Circuit in 1981.

1 THE COURT: 661 F.2d?

2 MR. LAVERY: Yeah. It's 661 F.2d 655 at 675.

3 There's also Cicelski, C-i-c-e-l-s-k-i, vs. Sears
4 Robuck & Company.

5 THE COURT: Wait. C-i-c --

6 MR. LAVERY: C-i-c-e-l-s-k-i.

7 THE COURT: Versus who?

8 MR. LAVERY: Versus Sears Robuck & Company.

9 THE COURT: What is the cite on that?

10 MR. LAVERY: 1984, 132 Mich. AP they're citing in
11 this case, in the Simer case, 132 Mich. AP 298 at 304 to
12 305 --

13 THE COURT: What are you going to tell me --

14 MR. LAVERY: -- and that's 338 Northwest 2nd --

15 THE COURT: -- that these cases --

16 MR. LAVERY: -- basically that the point here is
17 that the mechanism -- that a cy pres fluid recovery is a
18 procedural device to avoid manageability problems in the
19 calculation and distribution of damages in large class
20 actions. Examples of such problems are where the person is
21 not injured or not likely to come forward and prove their
22 claims, and where such persons cannot be given notice of the
23 case.

24 And those problems existed back in the seventies
25 and eighties, but with the technology that we have today,

1 obviously these people can be found. They can be found on
2 the internet. They can be emailed notice. They can be
3 given notice all of these ways. There is already an
4 internet website set up for people that electronically claim
5 in, so the cy pres remedy is just something that is of the
6 past and should not be contemplated in this case. The
7 entire fund should go to the claimants.

8 There is also Gordon vs. Boden, an Illinois case.
9 It could be found at 586 Northeast 2nd 461. That is the
10 First District of Illinois Appellate Court (1991).

11 THE COURT: 586 Northeast 2nd what?

12 MR. LAVERY: 461.

13 THE COURT: All right.

14 Look, so you would like to see the settlement
15 approved, but do away with the cy pres provision, put all of
16 that money, all of the money going to the class on a pro
17 rata basis?

18 MR. LAVERY: Yes.

19 THE COURT: Okay. I got it.

20 MR. LAVERY: Going on to my next point. Now, with
21 respect to attorneys' fees --

22 THE COURT: Don't those things go to just the
23 settlement being better, but doesn't necessarily make it
24 unreasonable the way it is?

25 MR. LAVERY: What, the plaintiffs' allocation?

1 THE COURT: Yes.

2 MR. LAVERY: The plaintiffs' allocation as
3 currently structured is unreasonable because of the fact
4 that the attorneys want 6 million based on an undistributed
5 fund, okay?

6 They want one-third of the money that goes to
7 charity. That is unreasonable. They are not here to help
8 charity. They are here to help real class members who were
9 paid and charged real penalty fees that have been litigated
10 for almost ten years.

11 Of course, Mr. Langone has familiarity with that,
12 because he has -- he currently as well for the last ten
13 years has litigated early termination late fee litigation
14 against Blockbuster Video that still continues and
15 personally knows Paul Weiss and Freed Weiss and Phil Boch,
16 not Boch and Cash, but formally of Freed Weiss, and that is
17 a whole different issue.

18 They are not here, interestingly enough, and we
19 understand you don't want to deal with attorneys' fees and
20 then we think that is appropriate. We think there needs to
21 be an evidentiary hearing. There is very significant issues
22 with the way that this was structured.

23 Basically it is our position with respect to that,
24 that there is some overreaching here, because if we look at
25 the way that Sprint and the other cases shook out, you will

1 have about 50,000 people claiming in, maybe for about a
2 25-dollar benefit, so that the recovery to the class is only
3 going to be about \$1.5 million.

4 And then in this case, let's see, if we
5 extrapolated the numbers the same, there is about 1.5
6 million that will go to the real class members, 2 million in
7 the subscriber cards, so we are talking about 3.5 million
8 actual to the class, but they are asking for double that in
9 fees, 6 million, so we believe it is patently unreasonable.
10 They can't be given a big credit for a huge cy pres, and
11 that is why that plan of allocation is unreasonable.

12 Now, going back to the attorneys' fees issue, just
13 for the record, there has been a memorandum of law filed by
14 mail with the Court, and they have replied to that on ETF.

15 There was a June 17th letter objecting to fees, and
16 there was previously the original March 24th, 2010
17 objection, which also objected to fees, and those have all
18 been briefed here. But we believe that under the In Re
19 Agent Orange case, which they cite to as authority for them,
20 that there has definitely got to be some very, very
21 important examination, even including that evidentiary
22 hearing with Paul Weiss here and Brad Lakin here, and Phil
23 Boch here, because under In Re Agent Orange, it talks about
24 the importance of cross-examination when it comes to class
25 action fees, and in this kind of case we believe it is very,

1 very important.

2 If I could give you the highlights since we have
3 traveled here, I don't want to go on to an area you don't
4 want to look at --

5 THE COURT: Well, I don't want to look at
6 attorneys' fees right now because I have to make a
7 preliminary decision whether I am even going to have a
8 hearing or just argument in which case you will get to argue
9 it again.

10 I mean, I will tell you what I will do. Since you
11 traveled here, I will give you a couple of minutes, and that
12 is it on this, if you want to tell me some highlight that
13 you want me to look at.

14 You already went into it when you were talking
15 about the percentage that is being asked for vis-a-vis the
16 funds that actually will be distributed to the class
17 members --

18 MR. LAVERY: I guess the first thing I would say
19 that's most important to get out to this Court is that
20 there's -- we believe that the current settlement agreement
21 on fees, which, of course, does not harm the 18 million, you
22 could give one dollar in attorneys' fees, and the settlement
23 still goes through. There is no bust-out clause, if there
24 is no threshold, you can give zero fees, if you want, and
25 that is clear in the settlement agreement.

1 As a preliminary issue, Rule 23A says that in a
2 class action, fees can either be given, if they are
3 authorized by law, or if they are authorized by an
4 agreement. With respect to authorized by law, we believe
5 that they are not authorized by law under the Rules of
6 Professional Conduct.

7 The first structural problem is a violation of Rule
8 1.15, safeguarding of property. When there is a dispute
9 about attorney fees, which there is, which counsel for Dias
10 indicated there is a clear dispute going on, they need to --
11 they cannot get paid early. There is a very odd feature in
12 this settlement that I have unfortunately seen develop in
13 class settlements recently where the lawyers get paid first
14 even before the appeal deadline.

15 In 15 days ATTM is going to cut a check for \$6
16 million to class counsel in this case before this thing has
17 been resolved, and the class members can't get their claims
18 paid until all of the appeals are settled. So you got this
19 bizarre situation, where they get 6 million upfront, but
20 then the case continues for years for the actual people that
21 they represented. I mean structurally, I think you should
22 take a stand and show that those kinds of settlement should
23 never be purported because it just doesn't make sense.

24 The whole promise that they will pay it back to the
25 class, if it's later harmed on appeal, just doesn't seem to

1 make pragmatic sense, because it is a taxable event, so the
2 6 million immediately is going to get eaten up the Federal
3 Government and so that's going to harm their ability to pay
4 it back. And then the next thing is if there's no insurance
5 or bond that they give, and then there's the issue of
6 insolvency.

7 Right now Freed & Weiss and Brad Lakin in the Lakin
8 Chapman firm, as it's currently called, and Phil Boch in the
9 Boch & Hatch firm, as it's currently called, are at odds in
10 an arbitration over the breach of a settlement related to
11 the Kinkel litigation, and they're all -- and Phil Boch and
12 Eric Freed and Paul Weiss are still in the Circuit Court in
13 Cook County in litigation over their fees in this case.

14 That is completely undisclosed to the Court and it needs to
15 be examined, because under Rule 1.5, there is an illegal --
16 there is a prohibited fee split. 1.5 prohibits the type of
17 agreement because there is basically some requirements,

18 The division needs to be in proportion to the work
19 done. We don't know what the division is. It is concealed.
20 There has not been given -- fee records given. We have
21 asked for them, and they have not been given, and we can't
22 assess the proportion without the actual time records,
23 rather than these summaries.

24 I have reviewed personally time records of Paul
25 Weiss in the Sprint case that are a public record, and he is

1 billing for class competition games. He is billing for
2 things like strategized --

3 THE COURT: Counsel, that is another case --

4 MR. LAVERY: -- right, right -- what I mean is --

5 THE COURT: -- Counsel, if I start talking, you
6 have to stop --

7 MR. LAVERY: Yes, your Honor.

8 THE COURT: -- the court reporter is not going to
9 be able to take both of us down.

10 Don't tell me about what is happening in another
11 case. I want to know what is happening here. All right?
12 Go ahead.

13 MR. LAVERY: If I may, that is a case. That was an
14 exhibit to the Freed & Weiss versus Boch & Hatch litigation,
15 which is about Cingular Wireless, now known as the ATTM
16 litigation. That was an exhibit that they were showing
17 about improper billing, so that is why I bring it up. It is
18 related to this case, not that case.

19 THE COURT: All right.

20 MR. LAVERY: Yeah. And the current litigation
21 between Weiss and Lakin and Weiss and Boch centers on this
22 case and what happened in Kinkel.

23 Just to let you know what happened in Kinkel is,
24 yes, they achieved a big victory in the Supreme Court, which
25 we would argue was stuff that had to do generally with

1 arbitration, not specifically to that arbitration, but
2 nevertheless, after they won, Phil Boch wrote a letter to
3 Donna Kinkel basically saying, well, we're not going to work
4 with Paul Weiss any more, so you got to choose. Are you
5 going to stay with us and Lakin, or are you going to stay
6 with Freed & Weiss?

7 She checked she would stay with Lakin and with Phil
8 Boch's firm, which was no surprise, since she is from
9 Madison County where Brad Lakin practices, so --

10 THE COURT: Counsel, you are getting far afield.

11 MR. LAVERY: -- well, yes. We just wanted to
12 apprise the Court that we believe it is significant.

13 Getting back to our legal --

14 THE COURT: Well, I said I would give you a little
15 leeway to talk about attorneys' fees. We are going to deal
16 with this on another day, so --

17 MR. LAVERY: Okay. Then I got some simple points.

18 The next point is there is no written agreement
19 between ETF and class counsel, assuming joint
20 responsibility. The ETF counsel, other than counsel for
21 Dias, is not before you and has not appeared in this case.
22 Then, the only parties that have joint responsibility are
23 the co-counsel.

24 With respect to -- so it is that Rule 1.5 prohibits
25 this type of agreement. The case of In Re Agent Orange and

1 that seminole case, which they cited actually, specifically
2 says that fee sharing agreements of this type, where all
3 discretion is given to counsel to compensate attorneys that
4 didn't do work on the case should be prohibited.

5 Then the final thing is Rule 23 as amended by CAFA,
6 it contemplates there is competition for lead counsel, and
7 that you will just pick the most adequate firm, and they're
8 the ones who share in the bounty of attorneys' fees rather
9 than strangers to the litigation, like ETF counsel, the way
10 it is structured here.

11 THE COURT: Thank you.

12 MR. LAVERY: Thank you very much.

13 THE COURT: Okay.

14 Are there any other attorneys here on behalf of any
15 objectors?

16 All right. It is now 3:15. There are no other
17 layers here today.

18 I will hear from Mr. Schroer. You have been
19 patiently waiting.

20 MR. SCHROER: It's been very interesting.

21 THE COURT: It is nice to have you in my court,
22 sir.

23 MR. SCHROER: Thank you.

24 Just for the record, my name is H.P. Schroer. I
25 live in --

1 THE COURT: Is it Schroer or Schroer?

2 MR. SCHROER: It's S-c-h-r-o-e-r.

3 I was a customer of AT&T Mobility in 2003 and was
4 charged an ETF.

5 First of all, I would like to thank the Court for
6 giving me an opportunity to address it in my opposition to
7 the settlement.

8 Secondly, since I am not an attorney, I know it is
9 not easy to deal with folks like me. I appreciate your
10 Court's indulgence.

11 THE COURT: No problem.

12 MR. SCHROER: Because of my being charged what I
13 considered an illegal charge, I refused to pay it. And
14 because of this, my ability to obtain credit has been
15 compromised for seven years. The low credit score created
16 by the credit reporting agencies has subjected me to
17 unconscionable interest rates, and I have been the victim of
18 unrelenting efforts from collection agencies to obtain their
19 pound of flesh. The most recent one was a matter of six
20 weeks ago.

21 Granted, I could have avoided all of this by simply
22 paying the ETF, but I was determined as a matter of
23 principle to make an effort to fight it.

24 From the inception of my individual complaint with
25 the FCC in the early 2000s, I have been joined by millions

1 of others in the various class action cases across the
2 country. As the Court knows, I was named a class
3 representative in the Verizon class action case.

4 The irony is although my questioning the legality
5 of the ETF has been vindicated over time, I and thousands of
6 others like me continue to be subject to the debilitating
7 effects of credit defamation caused by the ETF.

8 While I recognize that no settlement will satisfy
9 all parties, it is my belief that any settlement should
10 address the major concerns of those affected, and it should
11 be fair and reasonable to all, something the present
12 settlement fails to do.

13 Those who have made -- who paid an ETF are being
14 made whole by being reimbursed. However, I think that the
15 Court is entitled to some explanation on how the credit
16 defamation issue, the major concern of those who did not pay
17 the ETF, is addressed and made whole by a cash settlement of
18 25 dollars.

19 Mr. Cecchi -- Cecchi?

20 MR. CECCHI: Yes.

21 MR. SCHROER: Mr. Cecchi's explanation that we have
22 a right to opt out of the settlement and bring a suit
23 against AT&T is at best disingenuous.

24 Judging from the legal bills that he submitted by
25 his firm, as well as all of the other firms, I think it is

1 safe to say that there are very few individuals who are in a
2 financial position to fight this issue through bringing a
3 personal suit on their own to the Court.

4 THE COURT: You know, but there also could be
5 problems associated with being able to have a class of those
6 people as well because of the differences in personal damage
7 issues arising out of when your credit is affected, right?
8 How would we be able to determine in a class --

9 MR. SCHROER: I am not looking for an assessment of
10 damages. I am only looking for an option on the part of the
11 individual to have that option, either accept the 25
12 dollars, or have AT&T notify the credit reporting agencies
13 that the ETF has been cancelled or settled. It has nothing
14 to do with how much -- what effect the condemnation of
15 credit has against me or anybody else. That's an
16 entirely --

17 THE COURT: You say part of the settlement should
18 include those people who refused to pay it --

19 MR. SCHROER: Correct.

20 THE COURT: -- and whose credit has been affected,
21 right?

22 MR. SCHROER: Correct.

23 THE COURT: And then there should be an additional
24 item in the settlement that allows you not just the option
25 for the money, but also that AT&T as a defendant in this

1 case should notify the credit reporting bureaus?

2 MR. SCHROER: Not both. Either/or.

3 In effect, it would save AT&T money because they
4 wouldn't have to pay out 25 dollars.

5 It is my belief unless they were in unusual
6 circumstances, few, if any of us, would accept a 25-dollar
7 settlement against an option of having the credit reporting
8 agencies notified that the ETF is settled.

9 I cite the herculean efforts of Gary L. Lamb -- I
10 am tongue twisted here -- an individual who also objected,
11 and incidentally, he would like to have the option of having
12 the ETF -- the credit reporting agencies be notified that
13 this settlement -- the ETF has been settled.

14 When I asked the class attorney, Mr. Eckman, if any
15 of the class representatives were subject to credit
16 defamation, I was advised this information was not available
17 to me because it was not relevant to my objection.

18 I believe it is, and I would like to have the
19 Court's opinion. I have submitted that information.

20 Unfortunately, our society in spite of tremendous
21 advances continues to exhibit prejudice towards those of
22 color and certain ethnic backgrounds. I believe that there
23 is also a subliminal prejudice towards people who fail to
24 pay their bills, and therefore, they are not afforded the
25 same treatment as others in similar circumstances.

1 In my defense and for all of those who may have not
2 paid their bill because of a matter of principle, I should
3 like the Court to consider the following:

4 Mr. Fedor in his memorandum of law in response to
5 objection to the whole settlement, dated June 10th, states
6 that my argument is based on my own personal circumstances.

7 While that's certainly true, it is not unique to
8 me, but to thousands of others. And to prove my point, I
9 asked the class attorney for the number of people who did
10 not pay the ETF, yet filed a claim.

11 I was informed by Mr. Eckman it was not relevant to
12 my objection, and he refused me the information.

13 I believe it is not only relevant to me, but to the
14 Court as well. While I am not an attorney, neither is Mr.
15 Eckman a judge. And as I noted in my letter of June 11th to
16 him and to the Court, I await the Court's decision on my
17 request.

18 When I filed my objection to the settlement, it was
19 not my intent to sabotage the settlement, nor should my
20 action have been construed by any to disparage the effort of
21 all of those involved in the negotiations. I was naive in
22 thinking that the option I was proposing would be given some
23 consideration by the counsels in the case. However, from
24 the moment I filed the objection, I have been considered an
25 adversary by the class counsels.

1 Rather than their addressing their arguments
2 against the merits of the credit option, they have chosen to
3 question the legitimacy of my objection by demeaning my
4 motivation and refusing me information, which would help
5 reinforce my position, as well as be beneficial to the
6 courts in making their decisions.

7 I welcome the Court's opinion concerning my
8 rebuttal of their accusations, and I look forward to its
9 decision.

10 As I stated in my rebuttal, I have always from day
11 one been concerned with the defamation of the credit issue
12 when I first started my fight on the legality of the ETF
13 with Verizon.

14 This was done in spite of the fact that Verizon
15 cancelled the charge to me. As I explained through the
16 Verizon -- though the Verizon settlement did not include any
17 credit option, it was negotiated during a period when all
18 class actions were being threatened to be usurped by the
19 FCC. I and others spoke before the FCC in 2008, and due to
20 our combined efforts, we were successful in defeating the
21 cell phone providers' petition to have the FCC intercede.

22 Therefore, today, no negotiated settlement is under
23 the gun to settle for anything less than one which addresses
24 the concerns of most and is fair and reasonable to all.

25 Again, I ask the Court: What does 25 dollars do

1 towards changing a low credit score?

2 Sadly nothing.

3 Because of low credit scores created by the
4 insidious ETF, people can be denied loans, which can impact
5 their lives. The Court can do something which can help
6 change this vicious cycle, and in doing so, do something
7 other courts have failed to do. By including the credit
8 option amendment, you are not only giving claimants an
9 opportunity to exercise a right they are entitled to, but at
10 the same -- excuse me, your Honor -- but at the same time
11 providing some relief to those thousands of thousands in our
12 society who are in distress.

13 To sum it up: You will not find a litany of cases
14 to uphold my position, for I am sure the Court is
15 well-versed on this subject and doesn't need any information
16 from me.

17 I am appealing to the Court's sense of justice.
18 What I propose for the Court to consider on a scale of
19 justice is does my objection and proposed amendment, is it
20 reasonable, is it fair, does it have any deleterious effect
21 upon any class member or counsel?

22 Does it delay the finalization of the settlement?

23 Does it entail a great expense to put into effect?

24 The answer to that, I don't know because the class
25 counsel wouldn't tell me how many people are going to be

1 involved.

2 Does my amendment to the settlement make it fairer,
3 more reasonable, without changing its integrity?

4 I want to thank the Court for its patience. I hope
5 the Court will exercise its right by approving the inclusion
6 of the credit option settlement amendment in the settlement.

7 I look forward to your decision, and I hope my
8 efforts will not become, as many have said, an exercise in
9 futility.

10 I thank you.

11 THE COURT: Thank you, Mr. Schroer.

12 I thank you for the respect that you have shown to
13 the Court throughout. As a pro se litigant, not represented
14 by counsel, you are right, sometimes it becomes difficult
15 for the Court to deal with pro se litigants, but that has
16 not been the case with you, and for that I thank you as
17 well.

18 MR. SCHROER: Thank you.

19 THE COURT: All right. Let me speak to defense
20 counsel first.

21 Why don't we start with his objection? How
22 difficult would it be to do what he wants to do?

23 MR. CONNOLLY: Your Honor, with any settlement, and
24 your Honor noted it when the same objections were raised in
25 the Sprint settlement, this was a hard fought settlement.

1 We did not lose this case despite Mr. Schroer's argument --

2 THE COURT: He is not arguing that you lost the
3 case. He in fact lauds your efforts -- well, not your
4 efforts -- but the efforts of Mr. Cecchi and company in
5 carrying the banner, so --

6 MR. CONNOLLY: And, your Honor, we have granted the
7 25-dollar relief, which is a substantial relief to people
8 who didn't pay the ETF.

9 In addition, the settlement preserves their right.
10 If somebody comes after them in a collection action saying
11 they owed that ETF, they are allowed to continue to contend
12 it's illegal. They do not waive the right to continue, as
13 Mr. Schroer wants to, to claim that it is illegal. But he
14 is correct, the settlement we have reached does not agree,
15 does not agree for purposes of settlement, that all ETFs
16 ever charged have been illegal. That is not the settlement.

17 THE COURT: He is not asking you to recognize that
18 at this point. All he wants to do is to be able to have
19 something for those people who refused to pay the ETF, that
20 recognizes that his particular ETF claim has been settled.

21 MR. CONNOLLY: Your Honor, under the settlement as
22 with the T-Mobile and the Sprint and the Verizon settlements
23 before, this settlement does not eliminate the obligation to
24 pay ETFs for people who didn't pay them. It offers refunds
25 to them, offers significant refunds to the people who have

1 actually put out money for the ETF, but that has been the
2 case with every ETF settlement, and we are no different in
3 that regard. So our settlement is not to say that every ETF
4 we ever charged is therefore not owed.

5 THE COURT: Go ahead.

6 MR. CONNOLLY: Again, your Honor, not different
7 than T-Mobile and Sprint before us or Verizon in the Alemada
8 Superior Court before that.

9 Let me be clear about something because Mr. Schroer
10 has been very courteous and gentlemanly to me and to the
11 Court today. I feel like he has taken from our brief that
12 we ascribed some impropriety to the fact that he agreed in
13 the Verizon case as a named class representative to
14 precisely the relief that is in our settlement. I am not
15 suggesting it was improper for him to do that in that case.

16 To his credit, when we pointed out that he had
17 served as a class representative who agreed to a settlement
18 with exactly the same relief for this group of people as is
19 present in this settlement, he didn't hide behind his
20 lawyer. He didn't say, I didn't know about it.

21 He wrote to your Honor and said I knew about it. I
22 talked about it with my counsel, and we agreed it was fair.

23 Now, Mr. Schroer's position is there were events
24 going on in the FCC that made that a reasonable compromise,
25 and I 100 percent accepted that it was important to him.

1 There are many factors. We could spend a great
2 deal of time on today or other days on all of the risk
3 factors in this case that make this case like every other
4 case, a settlement and a compromise.

5 It is easy to come in and say, but can't you do
6 this, or can't you do this. That wasn't the compromise that
7 was struck.

8 On the specific FCC point, that was never resolved
9 by the FCC, and this settlement agreement, like the ones
10 before it, contains an express provision where class counsel
11 made AT&T promise that if the FCC does rule that these kinds
12 of claims are preempted, it doesn't form a basis for us to
13 back out of the settlement.

14 THE COURT: If you were assessed an ETF, and you
15 didn't pay it, you would be covered for your 25 bucks,
16 right?

17 MR. CONNOLLY: Yes.

18 THE COURT: You could come in and make a claim,
19 right?

20 MR. CONNOLLY: Yes.

21 THE COURT: Even though you never paid it?

22 MR. CONNOLLY: Yes.

23 THE COURT: Okay.

24 If you get the 25 bucks at that point, isn't your
25 ETF claim settled?

1 MR. CONNOLLY: No. Under the terms of the
2 settlement agreement, the settlement agreement provides that
3 the settlement does not obligate AT&T, again, as with all of
4 the carriers before us, to cease efforts to collect the
5 ETFs. We do not waive our right --

6 THE COURT: As against that person, though.

7 MR. CONNOLLY: No, no, your Honor.

8 As against that person, our settlement, as with the
9 ones before it, does not waive our ability to try to
10 continue to collect that, as it does not waive their right
11 to continue to oppose it, if we to do do that.

12 THE COURT: They can make a claim for damages --

13 MR. CONNOLLY: Hum --

14 THE COURT: -- is that correct? I just want to
15 know what the parameters are.

16 So if a person is charged an ETF and refuses to pay
17 the ETF, right, then they get notice of this settlement, and
18 goes in and says, okay, I want my 25 dollars, right? You
19 pay them the 25 dollars. You then sue them for the
20 collection, right?

21 MR. CONNOLLY: Yes.

22 THE COURT: You said you could still do that,
23 right?

24 MR. CONNOLLY: That's right. Well, yes. AT&T does
25 not file suit against its own, but let's just say we go down

1 the road, and it gets sold to somebody, and they sue them, a
2 collection agency, yes.

3 THE COURT: They could then claim that it was an
4 illegal charge, right? It doesn't bar them from saying
5 that?

6 MR. CONNOLLY: That is right. In defense of a
7 collection action, it does not bar them from doing that.

8 THE COURT: Can they as part of that defense
9 counterclaim say that you owe me money because my credit was
10 screwed up by it, because I say it is illegal, and if I am
11 correct in pursuing the fact that it is an illegal charge, I
12 now want damages for my credit being screwed up?

13 MR. CONNOLLY: That is right. That is released.
14 What they retain the right to do is they retain the right to
15 raise illegality as a defense to the claim that's being
16 brought against them for collection of the payment.

17 So if they were to prevail on that claim, they
18 would end up at the end of the day with 25 dollars, and not
19 having to pay the fee, if they prevailed.

20 THE COURT: All right.

21 Go ahead.

22 MR. CONNOLLY: Your Honor, do you have other
23 questions of Mr. Schroer, or I don't know if you want to
24 hear --

25 THE COURT: No. You have addressed I guess your

1 position with regard to that.

2 MR. CONNOLLY: Again, your Honor --

3 THE COURT: How would it affect this settlement to
4 do what Mr. Schroer wants to do?

5 MR. CONNOLLY: The administrative burden on us, for
6 example, I went back to my client, and I said, can you find
7 me something on Mr. Schroer. I did not know before today it
8 was 2003 that he paid the early termination fee.

9 Our ability to go back all of those years and
10 identify people and what their status is, and whether they
11 challenged it is not realistic. It's not something that's
12 at the touch of the finger. That's why we wouldn't agree to
13 do it in the settlement.

14 I also want to state that Mr. Schroer has said that
15 his situation is the only charge that he has not paid is the
16 ETF charge. He didn't leave owing us other money.

17 For the vast majority of people, that is not the
18 case. Most people who had an early termination fee also
19 don't pay other charges on their bill, and this settlement
20 says nothing about those charges.

21 So if somebody didn't pay their last bill of a
22 hundred dollars and didn't pay their ETF, there is nothing
23 in the settlement releasing any claims they have related to
24 the hundred dollars or any ability to remedy any defamation
25 of the credit for those. This is now leaking a little bit

1 into Mr. Lavery's point, but as your Honor noted, these
2 releases are consi -- have been to ETF related claims.

3 Again, your Honor, this is a specific issue that
4 arose in the Sprint settlement, and your Honor approved the
5 settlement there as well.

6 THE COURT: I understand. Throughout your papers
7 and Mr. Cecchi's papers, you make reference to the fact that
8 some of these things have been approved by the Court, and
9 that is true, and that is something that I will take into
10 consideration, but each settlement in these cases is unique
11 and different and should be looked at individually --

12 MR. CONNOLLY: I understood, your Honor --

13 THE COURT: -- and--

14 MR. CONNOLLY: -- and when I said that, I don't
15 mean to suggest -- I'm sorry, your Honor, for interrupting.

16 THE COURT: -- I said I could relook at a
17 particular issue and say, you know what, I think I missed it
18 on the other one, and I think this should be different,
19 right? It could be done.

20 MR. CONNOLLY: You could do that. Yes, your Honor.
21 I suggest you ought not, but yes.

22 THE COURT: Okay. I could do that.

23 (Laughter.)

24 MR. CONNOLLY: I have not as much to say about Mr.
25 Lavery's presentation because it is largely leaking into

1 attorneys' fees, and I guess I'll just say --

2 THE COURT: Anything to say about what the attorney
3 said? If you want to address it, address it now.

4 If not, I will hear from the other side.

5 MR. CONNOLLY: With respect to Mr. Lavery's
6 presentation, I think your Honor drew out the point, that he
7 does not object to the settlement in whole. He has an
8 objection where he would like to change the cy pres
9 provision, and he has some issues about attorneys' fees,
10 which we have not fully fleshed out and probably won't
11 today.

12 With respect to the cy pres, your Honor, I just
13 offer my experience. It is not uncommon in these kinds of
14 settlements to have cy pres provisions. I speak as a bit
15 unusual here. This money is not coming back to my client
16 regardless of where it goes. It's either going to claimants
17 or it's going to cy pres. It is not the case that it is
18 disfavored or uncommon if your Honor -- and this has come up
19 in the other -- I'm sorry, I sound like a broken record --
20 this has come up in the other settlements, where objectors,
21 not Mr. Lavery, showed up in other settlements and said all
22 the money should go out to claimants.

23 If it did, it would have to be simple. There was a
24 suggestion that the claims administrator has some ability
25 with the push of a button to decide who has paid or who

1 hasn't paid and what their status is. As we learned in
2 these cases, that is very difficult for the defendants to
3 do. There is no magic list of the claims administrator.

4 I think what he was really suggesting at the end of
5 the day, your Honor, was a much simpler program, which would
6 be instead of having a cy pres provision, to take the money
7 and divide it up by the number of claims and call it a day.

8 Honestly, your Honor, that is not my client's money
9 anyway, if the settlement is approved, so I defer to the
10 Court, of course, as I do on everything, but I mean I do
11 think fashioning that remedy is something that is up to your
12 Honor.

13 Your Honor has kept the cy pres in the other
14 settlements. I think there is a potential issue in this
15 cases, where if you are just simply dividing up a fund among
16 the number of claimants, you do run a risk that the numbers
17 are too large, you encourage fraudulent claims, or if word
18 gets out that that is what is going to happen, you can
19 encourage fraudulent claims. The more it looks like a
20 lottery ticket and not like a claim for damages.

21 I think with the claim numbers we are expecting
22 here, I am not suggesting we are going to be handing out
23 \$10,000 checks, if you were to do it that way, but it is a
24 concern. I guess, again, your Honor --

25 THE COURT: I know that you are not in the position

1 to tell me with exactitude or anything dealing with
2 exactitude, but the best case scenario, right?

3 MR. CONNOLLY: We are over 43,000 now, and I think
4 in the experience with some of the other settlements, and
5 just more broadly, is that you see a bump. If your Honor
6 issues final approval for the settlement, the claims period
7 runs for a period of time beyond final approval for the
8 reason that there will be stories, you know, there will be
9 publicity around your final decision, and that will drive
10 more claims, so I think it is very easy to imagine 50,000
11 claims and again potentially higher than that.

12 But standing at 43 now, if you look at what
13 happened with T-Mobile, and we are higher than T-Mobile was
14 to this point in their settlement process --

15 THE COURT: Would the suggestion, though, wouldn't
16 that not be more simplistic to administer, the suggestion
17 that has been made, rather --

18 MR. CONNOLLY: I would say the suggestion that is
19 made, where there is not an investigation, but simply these
20 are people who filed claims, sort of let's magnify their
21 claim, if you will, to take up the money that is there, that
22 is something I believe for us to administer -- I mean, the
23 secret to that is it's mathematical. I mean, you take a
24 number -- I should -- actually I am jumping ahead, because
25 they say 16 million, and class counsel, no doubt, think

1 there will be less available because you will award them
2 fees, but a number will be left over for distribution. You
3 could give us orders to sort of magnify people's claims, if
4 not pro rata to administer, but pro rata increasing, that
5 that could be done and --

6 THE COURT: Okay.

7 MR. CONNOLLY: -- again, that is why I say, and it
8 is easy for me to say because it is no longer my client's
9 money, if you approve the settlement. We think this is one
10 that is in your real house and it's in your discretion as it
11 was in the other settlements, Judge.

12 THE COURT: Thank you very much.

13 Mr. Cecchi, or, Mr. Strange, somebody?

14 MR. CECCHI: Very briefly, Judge, and then Mr.
15 Strange is going to address In Re Agent Orange --

16 THE COURT: Address what?

17 MR. CECCHI: -- the In Re Agent Orange case.

18 THE COURT: Mr. Cecchi, why do you care what
19 happens to that money?

20 MR. CECCHI: The issue from our perspective as
21 class counsel is that we designed the plan of allocation to
22 provide class members as close as we could with damages,
23 what -- how there were damaged, and that is why you have the
24 stepped plan of allocation.

25 The danger, the concern, the policy concern I would

1 have is that some people are going to get a windfall for
2 more than their damages.

3 I also share Mr. Connolly's concern that you have a
4 potential for creating a lottery ticket, and there is news
5 out --

6 THE COURT: But the windfall here would be minimal
7 in terms of dollars, right?

8 I mean, there are many ways to structure that. You
9 could say, you could put a cap on the cy pres, for example,
10 and distribute the rest pro rata, right?

11 MR. CECCHI: I think all of that is true.
12 The policy --

13 THE COURT: It doesn't really affect -- it could
14 only affect the class --

15 MR. CECCHI: -- well --

16 THE COURT: -- other than the policy
17 considerations, the Court has to have policy considerations,
18 and I agree with you, the potential for the fraudulent
19 claims issue and the associated and administrative cost, if
20 I were to investigate those things --

21 MR. CECCHI: Right.

22 THE COURT: -- the potential of a windfall to one
23 class member over others may put the class members in an
24 antagonistic position in that some people are going to get
25 more money --

1 MR. CECCHI: It is certainly not insurmountable.
2 All of those issues are not insurmountable. I agree with
3 Mr. Connolly. It is something an experienced claim
4 administrator can handle.

5 The concept that we put into this settlement and
6 the other settlements was the idea of having to claim,
7 having to file a claim is important. You have to be
8 invested in the process and to get back that class member a
9 measure of their damages as close as you can, that was the
10 concept and theory, and not to talk about the other cases,
11 it was used in many cases. There is nothing conceptually
12 wrong with what your Honor is saying --

13 THE COURT: Just as I sit here, I think there are
14 many different ways to do it.

15 You can say it is pro rata, not to exceed, you
16 know, more than one-quarter of your actual damages.

17 MR. CECCHI: There's plenty of ways. Absolutely.
18 I agree, and your Honor would have the discretion to fashion
19 that --

20 THE COURT: All right. Let's get to the other
21 issue.

22 MR. CECCHI: Very briefly on Mr. Schroer, we
23 appreciate the passionate remarks that he made to your
24 Honor. There's a couple of points I would make.

25 He was the class rep in Verizon. The settlement

1 here is exactly the same as Verizon, so it did come as some
2 surprise to us that Mr. Schroer came forward to say that
3 this one is not fair and reasonable and adequate as to that
4 provision.

5 The real issue there, though, I have some
6 familiarity with this having negotiated these ETF
7 settlements over a number of years. Many of these ETFs are
8 sold. AT&T doesn't do this collection work. They sell the
9 debt. I can speak that that was the case in T-Mobile and
10 Sprint. They don't own these debts any more. Those
11 defendants who own this debt and paid these gentlemen for
12 those debts are not before the Court, so that's really the
13 issue on the credit relief. That is the issue we faced
14 trying to negotiate that issue when we were trying to settle
15 the case. Those defendants are not before the Court.

16 I did want to very briefly respond to Mr. Lavery's
17 comments. It somewhat surprised me because most of his
18 filings or Mr. Langone's filings were directed at other
19 issues, namely, the attorneys' fee issue. I note two things
20 for your Honor. We fully briefed it. Rule 1.5 is not the
21 touchstone here. Rule 23 is. None of the cases he cited
22 are Rule 23 class action cases. None of the principles he
23 brought to bear in this case have anything to do with your
24 Honor's discretion (A).

25 (B), allocation of fees, according to the leading

1 treatise on class actions and numerous cases is routinely
2 and preferably given to class counsel to allocate in the
3 first instance. Your Honor is the ultimate fiduciary for
4 the class, and you ultimately have discretion over that, but
5 there is no illegal fee sharing arrangement here between
6 anybody. This is a Rule 23 application to your Honor.
7 Every one of those lawyers performed work. We did an
8 assessment that they performed valuable work, and if we are
9 fortunate to have our fee application granted, we will make
10 an application if your Honor gives us that discretion.

11 I do want to put something on the record, Judge.
12 The question that Mr. Lavery raised about the, quote,
13 unquote, illegal fee sharing, Rule RPC 1.5 and Rule 23 is
14 within your Honor's sole and exclusive jurisdiction. I
15 don't want to have to burden myself or more importantly your
16 Honor with an All Writs Act application to enjoin Mr.
17 Langone from the lawsuit, which he filed against myself, my
18 firm, Mr. Strange, and a bunch of other lawyers who I don't
19 know what they have to do with this. But he filed a lawsuit
20 this week, and Mr. Langone is in court here today,
21 addressing the very issue that his lawyer just argued to
22 your Honor.

23 I would ask Mr. Langone when I finish my remarks to
24 commit to your Honor that he will withdraw that lawsuit, so
25 I don't have to spend the time and energy of defending it,

1 putting my malpractice carrier on notice and bringing an All
2 Writs Act application to your Honor to have it dismissed and
3 enjoined.

4 So when I am done, I will ask that Mr. Langone or
5 his counsel tell us what he intends to do about the lawsuit
6 that he filed.

7 One other point I wanted to make -- oh, what is
8 motivating Mr. Langone is a complete mystery to me because
9 whatever is happening in Madison County, Illinois that he
10 apparently is involved in, I am not involved in. It has
11 nothing to do with this case.

12 Whatever is going on between Mr. Weiss, Paul Weiss,
13 who is not class counsel in this case, Mr. Boch, who is not
14 class counsel in this case, and Mr. Lakin, who is not class
15 counsel in this case, what's going on in Illionois has
16 nothing to do with the fairness and adequacy of this
17 settlement, nor the appropriateness or lack of
18 appropriateness of the fee application that we have asked
19 your Honor to rule upon.

20 Why he has brought that tangential dispute here,
21 why he has sued me in Illinois out of some animus to lawyers
22 who are not in this case is a complete and total mystery to
23 me, but we would ask him to have the decency and
24 professional courtesy to let the Court know whether or not
25 we are going to be dealing with an All Writs Act application

1 next week about the lawsuit, and that that is solely within
2 your Honor's jurisdiction.

3 Thank you, Judge.

4 MR. STRANGE: Just a few brief points, your Honor.
5 Brian Strange for the class.

6 With respect to the distribution, one of the issues
7 that we were concerned with is because these are -- we
8 contend illegal penalties, at the beginning of the contract
9 arguably those people have not suffered any damages. It is
10 really -- and I made this argument before your Honor on the
11 other side of the Sprint case -- it is those people at the
12 end of their contract that have a day left or 30 days left
13 that are really the ones, when they have to pay the 175 or
14 whatever the amount of money, are really the ones damaged --

15 THE COURT: What?

16 MR. STRANGE: -- those are really the people
17 damaged because they are paying that fee with a small amount
18 of time left in the contract, and the late term payors we
19 talked about before, so the structure of the distribution
20 was really, you know, the late term payors get the \$140, and
21 that if you don't know whether you paid an ETF, you are down
22 to the lower end of the scale, where if you are in the early
23 part of your contract, so we tried to allocate them, you
24 know, according to what the claims were of the plaintiffs.

25 Obviously, we would, you know, like to have as much

1 money go to the class as possible, but we provided a
2 mechanism for people who make claims and just traditionally
3 in these types of cases, if people don't make claims, one
4 thing we want to make sure of is that it doesn't go back to
5 the defendant and it goes to a charity somehow related to
6 the class of plaintiffs which your Honor would have the
7 right to approve, should it get to that point, if all of the
8 claims are not exhausted, and we don't know at this point if
9 they are all exhausted or not. But if they are, it is not
10 an issue. If not, then your Honor would have the right to
11 approve whatever charity it should be allotted to the class
12 that we represent. So the allocation was designed to
13 address the claims that were presented in the case.

14 With respect to the issue of fees since it was
15 touched on, with respect to Mr. Langone, apparently there is
16 an issue going on with Mr. Weiss. In one of his letters he
17 said that if I would have known that he was involved in this
18 case, I would have opted out. That's in one of his letters
19 I think that was submitted to the Court. So we actually
20 gave him -- we said, look, if you want to opt out, we will
21 see if we can get you a late opt-out, and we have not heard
22 from him on that issue.

23 With respect to this attorneys' fees issue, it
24 is -- under Rule 23, the controlling law, as your Honor
25 knows, is Rule 23. If every time a court sitting in a class

1 action has 50 states and had to apply the law of the state
2 they were sitting in, that would be a problem, and that is
3 why the courts have said that the courts in control of the
4 fees under a federal class action under the class action
5 fairness act is under Rule 23 --

6 THE COURT: What do you say that potentially here
7 in light of the historical data regarding how many claims
8 were filed in the other cases, cases that weren't looking at
9 attorneys' fees, which counsel is asking for, much exceed
10 the amount of the benefit that the class members are
11 actually getting?

12 MR. STRANGE: That is a traditional argument made
13 by objectors. That was routinely objected -- or routinely
14 overruled even in class actions where there is a reversion
15 because the courts have said, look, you can make available a
16 fund. And I have had class actions where there is large
17 checks that people don't claim, \$10,000. You know, you can
18 make things available, but you can't necessarily make them
19 take it, and the courts have routinely rejected those types
20 of arguments. There is only one case I know that has even
21 held it.

22 I just had a case down in Puerto Rico, in federal
23 court in Puerto Rico, where everybody made the same
24 argument, and it was overruled. It's traditionally
25 overruled because it just presents a whole host of problems.

1 This case is even stronger because there's no money
2 going back to the defendants. They paid or are going to pay
3 the 18 million, and that is what the fee should be based on.

4 Then -- I mean, it is particularly troubling that
5 we, as class counsel, went to all of the trouble to try to
6 negotiate with all of the counsel involved in this case,
7 which was no small matter, as your Honor might imagine, and
8 the In Re Agent Orange, which is a 1987 2nd Circuit case, I
9 have it right here, what that Court said was exactly that
10 class counsel usually is in the best position to determine
11 those fees even after the courts award them, and it should
12 be based on people's roles, how these people contributed to
13 the case, which we are in the best position to know, i.e.,
14 the Kinkel case and the case in California.

15 What the Agent Orange case said is -- and in that
16 case there was a particular issue, which was there was a PSC
17 that made a provision where you could get three times your
18 investment -- whatever you invested for cost, you got three
19 times that back, the fee arrangement. And the court said,
20 if there is a return on investment situation to the class
21 counsel, that is a potential problem. But in the same
22 breath the court said, accordingly, the practice of allowing
23 class counsel to distribute a general fee in an equitable
24 fund case among themselves pursuant to a fee sharing
25 agreement is unexceptional -- unexceptional, so that court

1 does stand for the fact that class counsel can distribute it
2 among themselves, but in a particular situation where you
3 have three times your cost, you know, that wouldn't be
4 appropriate. So we have gone to the, you know, the
5 extraordinary effort to try to fold in class counsel who
6 have worked for years on this case and have them share in
7 the fee.

8 Thank you, your Honor.

9 THE COURT: Thank you.

10 MR. SCHROER: May I have just an opportunity to
11 address something that Mr. Cecchi brought out?

12 THE COURT: Very briefly, okay?

13 MR. SCHROER: It will be very brief.

14 THE COURT: Very briefly because are concluding
15 this hearing at four o'clock.

16 MR. SCHROER: I appreciate that. Thank you for the
17 privilege.

18 I think what he stated with regard to the selling
19 of the accounts to some other individuals --

20 THE COURT: Right.

21 MR. SCHROER: -- is smoke and mirrors.

22 THE COURT: Why?

23 MR. SCHROER: Because we don't even know how many
24 people are in the situation, in the ETF situation.

25 In other words, there may be one person -- I just

1 found out there are 46,000 in total. Am I correct?

2 THE COURT: That is what was said to the Court.

3 MR. SCHROER: In the information, and I am
4 guestimating that of that 46,000, I would say that the
5 majority of it, and this information I am sure he knows,
6 would be those who have paid the EFT. Those who have not
7 paid the ETF, I would think would be minuscule.

8 So by him saying that there -- or I got the
9 impression, and I might be wrong, that he was implying that
10 it would entail a great deal of expense on the part of AT&T
11 to then go to people who they sold these accounts to, maybe
12 on ten cents on the dollar, as such, that they would have a
13 great deal of expense to do that, and I say it is -- I don't
14 think it is the case, and I would like to leave you with
15 that thought.

16 THE COURT: Thank you.

17 Mr. Lavery?

18 MR. LAVERY: Yes.

19 THE COURT: What is this about this lawsuit that I
20 just heard about?

21 MR. LAVERY: Would you like Mr. Langone to address
22 it?

23 THE COURT: No. You represent him. I am not going
24 to hear from a litigant that you represent.

25 MR. LAVERY: Okay. Sure.

1 Your Honor, that action was filed as a declaratory
2 judgment action that named lead counsel as necessary parties
3 that relates to --

4 THE COURT: What does it relate to?

5 MR. LAVERY: -- it relates to the propriety of
6 class counsel giving money to the Kinkel counsel.

7 THE COURT: In connection with this case?

8 MR. LAVERY: Yes -- no, in connection with the --

9 THE COURT: In connection with this case, right?

10 MR. LAVERY: -- in connection with the attorney fee
11 award that may -- which is undisclosed with respect to
12 what --

13 THE COURT: How is that not under the jurisdiction
14 of this Court?

15 MR. LAVERY: Because ETF counsel, Boch, Lakin,
16 Weiss -- Weiss has filed, I believe an appearance in the
17 Sprint case, and so have Lakin and Boch, but they have never
18 came under this case. Therefore, ETF counsel has not --
19 they are not under the jurisdiction of your Honor right now,
20 and that is essentially the point, and it has not been
21 served. It is basically there -- to be there in case your
22 Honor would approve it today, and then the issue would be
23 about this -- because there is this 15-day rule, and they
24 get paid in advance, and then the issue would be whether or
25 not there could be a declaration that class counsel could

1 not take -- could not diminish the size of the fund in order
2 to pay off Lakin and Boch and Weiss. That is my
3 understanding.

4 THE COURT: How is that not in the jurisdiction of
5 this Court? I still don't understand that.

6 MR. LAVERY: Because of -- you would have to ask
7 Mr. Langone --

8 THE COURT: Look, here is what I am going to do.

9 MR. LAVERY: Yes.

10 THE COURT: It is up to you how you want to handle
11 that --

12 MR. LAVERY: Yes.

13 THE COURT: -- but at the end of the day, if it
14 turns out that that lawsuit is clearly within all four
15 corners within the jurisdiction of this Court, and there is
16 going to be additional litigation or motion practice in
17 connection with this in order for me to enjoin a case that
18 obviously belongs here, I am not going to be very pleased
19 about that, and I certainly would entertain any kind of
20 application with regard to something that turns out to be
21 frivolous, that was just filed in order to create some
22 additional problem in another court, which clearly should be
23 before this Court.

24 MR. LAVERY: No, and --

25 THE COURT: Do we understand each other?

1 MR. LAVERY: -- clearly, your Honor. And we are
2 waiting upon your ruling and taking no action because
3 essentially your ruling, if you expand the size of the fund,
4 for example, to take out the cy pres, then you do have to
5 consider the percentage of the fund that they would get
6 rather than the one million, and so it would moot it out,
7 and then -- so I mean, essentially we believe that your
8 action could moot out the need for a declaratory judgment
9 action, but Mr. Langone didn't want to wait --

10 THE COURT: What if I approve it the way it is,
11 then what?

12 MR. LAVERY: Well, then presumably we would have to
13 appeal to the third Circuit.

14 THE COURT: Correct. But that lawsuit still has
15 nothing to do with the price of beans because I am going to
16 be making the decision here.

17 MR. LAVERY: Well, unless you rule that ETF counsel
18 are outside of the scope of your jurisdiction, which is an
19 issue that we have put in our briefs. We put it in the
20 briefs --

21 THE COURT: Counsel, I knew nothing about this
22 lawsuit until ten minutes ago --

23 MR. LAVERY: Well, right --

24 THE COURT: -- All I am saying is, because I have
25 had experience like this in other cases, that I don't want

1 this being used as a vehicle to either create additional
2 issues for class counsel because of whatever animosity
3 exists, or to try to usurp the jurisdiction of this Court by
4 filing somewhere else, when everyone knows that it pertains
5 to a matter that is presently pending before this Court.
6 Because if the Court is then going to be required to
7 entertain an All Writs Act application or briefing on that
8 or argument on that, and ultimately the person who filed the
9 lawsuit knows very well that it was within the jurisdiction
10 of this Court will end up paying attorneys' fees and
11 sanctions. I am not going to go through an exercise like
12 that. I am not suggesting what is what happened here, but I
13 want everyone to understand where I stand with regard to
14 that.

15 MR. LAVERY: And, your Honor, we contemplated that
16 if that were to occur, the case would probably be
17 transferred to your jurisdiction under the appropriate
18 transfer rules for the U.S. District Court system. But the
19 question was we couldn't get jurisdiction over Lakin, Boch
20 and Weiss in the State of New Jersey. That was only
21 possible in the State of Illinois.

22 THE COURT: Thank you.

23 MR. CECCHI: Judge, I would just like to hand a
24 copy of the lawsuit to your Honor, so you have it for your
25 records. A prayer for relief is squarely within the four

1 corners of your Honor's jurisdiction. It is exactly the
2 Rule 1.5E argument that is made, and it is a frivolous
3 lawsuit --

4 THE COURT: Stop, Mr. Cecchi. I am not going to
5 decide this issue today. That lawsuit is not before me, and
6 you may be right, or you may be wrong. I don't know about
7 that. All I am saying is that in these class action
8 lawsuits, there is always the issue where everybody starts
9 fighting about the fees, and I recognize it is part of the
10 type of case that it is.

11 I suggest you guys talks about this and figure out
12 whatever position you take, that it better have a solid
13 legal basis because I don't want to end up having litigation
14 and motion practice over things that are clearly frivolous
15 or clearly something that should have been resolved by way
16 of an agreement, to have the Court decide it or do whatever,
17 so either work it out or file whatever motions you think are
18 appropriate.

19 MR. LAVERY: Thank you.

20 MR. CECCHI: Thank you, Judge.

21 THE COURT: Okay.

22 I am going to obviously take this matter under
23 consideration. I am going to take another look at the
24 attorneys' fees situation and figure out how I am going to
25 do that, if I am going to approach that, or whether or not

1 we have to have another hearing just on that issue.

2 Certainly my interest here is to moving the -- if I
3 think the settlement is adequate and appropriate, to move it
4 along for the benefit of the class, not necessarily for the
5 benefit of counsel, although that is going to happen as well
6 if things are approved. It is just a question of timing, so
7 I will probably address the settlement first, counsel fees
8 second. I want to resolve all of the issues in one shot, if
9 I can do that. I will try to do that, of course, in one
10 sitting, but it may require additional argument. I don't
11 know.

12 MR. CONNOLLY: Your Honor, could I ask one question
13 about the timing?

14 THE COURT: Sure.

15 MR. CONNOLLY: Is your Honor suggesting that there
16 might be an order on the final approval of the settlement
17 then perhaps before there was an order on the final
18 approval --

19 THE COURT: I am suggesting that that is a
20 possibility.

21 MR. CONNOLLY: Again, your Honor, if that were to
22 happen, I would just call your attention to Article 3,
23 Section 1 of the settlement agreement, which --

24 THE COURT: When you say "Article 3," you know --
25 (Laughter.)

1 MR. CECCHI: It's not as important as the other
2 Article 3, Judge.

3 THE COURT: Section 1?

4 MR. CONNOLLY: Section 1. It just has to do with
5 the timing of AT&T Mobility's payment obligations under the
6 settlement. We have paid into escrow all but 6.25 million,
7 which would end up in the payment of the final amount into
8 the escrow being maintained by Rust, would be -- is
9 triggered by the date of the entry of the final approval
10 order and judgment. And as you can imagine, when I go tell
11 them they have to write a check, assuming that's where we
12 end up, if your Honor approves the settlement, they will
13 want to look at this and be clear that what you have is --

14 THE COURT: How would that -- run this by me again.

15 MR. CONNOLLY: Sure.

16 Our final payment obligation --

17 THE COURT: Final payment as in final amount on the
18 entire fund.

19 MR. CONNOLLY: Exactly, your Honor.

20 We have funded a large portion of the 16 million
21 already and put it into escrow.

22 THE COURT: All but 6.2?

23 MR. CONNOLLY: All but 6.2, that's right, your
24 Honor. The last 6.2 is due to be paid into escrow within
25 ten business days of the date of entry of the final approval

1 order and judgment.

2 THE COURT: So why does whatever I do affect your
3 ability to do that?

4 MR. CONNOLLY: As long as you were sort of -- all I
5 am asking, your Honor, is if you do approve the settlement,
6 and if you do do it before resolving the attorneys' fees --

7 THE COURT: The money will still be in escrow,
8 right? The attorneys' fees money would then be in escrow
9 so --

10 MR. CONNOLLY: I apologize. I am not being clear.

11 I'm just saying I need to -- when I go to my client
12 and say, time to write a \$6.2 million check, but the case
13 isn't totally over yet because the judge is still sitting on
14 some issues --

15 THE COURT: But the issues will have to do with the
16 way the money is distributed --

17 MR. CONNOLLY: Absolutely.

18 THE COURT: -- I don't see how it is an issue --

19 MR. CONNOLLY: I apologize, your Honor.

20 THE COURT: -- maybe it is too late in the day.

21 Explain it to me again.

22 MR. CONNOLLY: Sure.

23 THE COURT: I say to you, let's just for the sake
24 of argument -- obviously if I say I don't approve the
25 settlement, then --

1 MR. CONNOLLY: Then I would have a different
2 conversation.

3 THE COURT: -- you would have a different
4 conversation with your client.

5 If I approve the settlement, the settlement
6 document kicks into play, and it requires you to pay the
7 money to escrow within a given time. You pay it.

8 MR. CONNOLLY: That's right.

9 THE COURT: The distribution of the money issue is
10 not your payment of it into escrow.

11 MR. CONNOLLY: All I am asking for, your Honor, in
12 that circumstance would be a sentence that simply says:
13 This constitutes the final approval of the settlement and
14 judgment and payment. Just something that I can show to my
15 client that says, see, all of the issues aren't resolved,
16 but this is the magic piece of paper that means that you
17 have to write the check.

18 THE COURT: All of the issues as to your client.

19 MR. CONNOLLY: That's right, your Honor.

20 THE COURT: Does everybody agree to that?

21 MR. CECCHI: We do, Judge.

22 The attorney fee order would have nothing to with
23 their funding obligation.

24 THE COURT: That is the way I see it.

25 MR. CONNOLLY: That is the way I see it, too, your

1 Honor. Just all of the other settlements, not to beat a
2 dead horse, everything happened at once. It was sort of
3 nice and easy and simple. So all I am asking is if there is
4 that statement, and it could be noted, so it will make it
5 easier for me to tell the people, "Yes, it is time to write
6 the check."

7 THE COURT: Okay.

8 Thank you, Counsel.

9 MR. CECCHI: Thank you, Judge.

10 MR. CONNOLLY: Thank you, your Honor.

11 (Court adjourned.)
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\$	47:6 200 [4] - 18:7, 18:8, 18:23, 19:3 200,000 [1] - 42:23 2000s [1] - 54:25 2003 [2] - 54:3, 67:8 2004 [1] - 14:21 2005 [1] - 15:24 2007 [1] - 5:8 2008 [1] - 59:19 2009 [2] - 5:12, 5:17 2010 [2] - 5:19, 47:16 22 [2] - 9:18, 18:16 23 [9] - 20:3, 53:5, 75:21, 75:22, 76:6, 76:13, 79:24, 79:25, 80:5 23A [1] - 49:1 24th [1] - 47:16 25 [12] - 19:19, 21:15, 38:17, 55:18, 56:11, 57:4, 59:25, 64:15, 64:24, 65:18, 65:19, 66:18 25,978,568 [1] - 19:23 25-dollar [3] - 47:2, 57:6, 62:7 25-million-900-something-thousand [1] - 19:20 27 [1] - 19:18 27th [1] - 23:13 28 [1] - 9:12 298 [1] - 44:11 29th [1] - 8:24 2nd [5] - 5:19, 44:14, 45:9, 45:11, 81:8	50,000 [6] - 40:1, 42:11, 42:15, 43:8, 47:1, 71:10 531 [1] - 12:10 586 [2] - 45:9, 45:11	achieved [1] - 51:24 Act [6] - 4:22, 37:17, 76:16, 77:2, 77:25, 87:7 act [1] - 80:5 action [30] - 4:2, 4:18, 5:24, 5:25, 9:13, 15:21, 16:19, 22:6, 22:7, 25:21, 27:19, 32:5, 39:22, 47:25, 49:2, 55:1, 55:3, 58:20, 62:10, 66:7, 75:22, 80:1, 80:4, 84:1, 84:2, 86:2, 86:8, 86:9, 88:7 actionable [1] - 41:19 actions [7] - 39:17, 42:9, 44:20, 59:18, 76:1, 80:14, 80:16 actual [6] - 24:1, 24:4, 47:8, 49:20, 50:22, 74:16 added [2] - 29:2, 40:22 addition [4] - 6:10, 6:24, 26:11, 62:9 additional [6] - 22:19, 56:23, 85:16, 85:22, 87:1, 89:10 address [12] - 11:18, 13:25, 27:8, 54:6, 55:10, 69:3, 72:15, 79:13, 82:11, 83:21, 89:7 Address [1] - 72:16 addressed [4] - 20:4, 29:15, 55:17, 66:25 addresses [2] - 30:14, 59:23 addressing [3] - 11:12, 59:1, 76:21 adequacy [2] - 11:20, 77:16 adequate [3] - 53:7, 75:3, 89:3 administer [3] - 71:16, 71:22, 72:4 administrative [2] - 67:5, 73:19 administrator [8] - 30:13, 39:8, 39:15, 42:1, 42:8, 69:24, 70:3, 74:4 admission [3] - 6:25, 7:8, 8:17 admit [1] - 8:7 admitted [3] - 6:11, 6:22, 7:5 adopted [1] - 37:8 advance [1] - 84:24 advanced [2] - 13:11, 20:10 advances [1] - 57:21 adversary [1] - 58:25	advised [1] - 57:16 Advocates [1] - 39:11 affect [4] - 67:3, 73:13, 73:14, 91:2 affected [3] - 55:10, 56:7, 56:20 afforded [1] - 57:24 afield [1] - 52:10 afternoon [3] - 32:3, 34:11, 35:22 afterwards [1] - 17:1 agencies [6] - 41:5, 54:16, 54:18, 56:12, 57:8, 57:12 agency [1] - 66:2 Agent [7] - 47:19, 47:23, 52:25, 72:15, 72:17, 81:8, 81:15 aggregate [2] - 9:15, 37:4 ago [6] - 7:8, 14:18, 33:22, 54:20, 86:22 agree [7] - 62:14, 62:15, 67:12, 73:18, 74:2, 74:18, 92:20 agreed [7] - 17:17, 18:13, 19:6, 19:7, 63:12, 63:17, 63:22 agreement [24] - 5:5, 25:12, 27:8, 28:18, 33:4, 33:12, 36:21, 36:23, 36:24, 37:6, 42:25, 43:10, 48:20, 48:25, 49:4, 50:17, 52:18, 52:25, 64:9, 65:2, 81:25, 88:16, 89:23 agreements [2] - 27:18, 53:2 ahead [4] - 51:12, 63:5, 66:21, 71:24 aisle [1] - 25:10 akin [1] - 22:17 Alamada [1] - 13:12 Alemada [3] - 14:14, 40:22, 63:7 allegations [1] - 29:2 Allen [1] - 22:25 allocate [2] - 76:2, 78:23 allocation [11] - 37:7, 38:11, 38:14, 41:21, 45:25, 46:2, 47:11, 72:21, 72:24, 75:25, 79:12 allotted [1] - 79:11 allow [1] - 8:18 allowed [3] - 15:10, 42:6, 62:11 allowing [1] - 81:22 allows [2] - 36:24, 56:24 almost [3] - 24:15, 43:14, 46:10																
'03 [1] - 36:3	23 [9] - 20:3, 53:5, 75:21, 75:22, 76:6, 76:13, 79:24, 79:25, 80:5 23A [1] - 49:1 24th [1] - 47:16 25 [12] - 19:19, 21:15, 38:17, 55:18, 56:11, 57:4, 59:25, 64:15, 64:24, 65:18, 65:19, 66:18 25,978,568 [1] - 19:23 25-dollar [3] - 47:2, 57:6, 62:7 25-million-900-something-thousand [1] - 19:20 27 [1] - 19:18 27th [1] - 23:13 28 [1] - 9:12 298 [1] - 44:11 29th [1] - 8:24 2nd [5] - 5:19, 44:14, 45:9, 45:11, 81:8	6	6 [6] - 37:5, 46:4, 47:9, 49:15, 49:19, 50:2 6.2 [4] - 90:22, 90:23, 90:24, 91:12 6.25 [1] - 90:6 655 [2] - 43:25, 44:2 661 [3] - 43:24, 44:1, 44:2 675 [1] - 44:2	7	729,000 [1] - 20:1 7th [2] - 43:23, 43:25	8	890,000 [1] - 33:18	9	90 [2] - 42:5, 42:10	A	A [1] - 75:24 ability [10] - 19:8, 19:11, 41:9, 50:3, 54:14, 65:9, 67:9, 67:24, 69:24, 91:3 able [6] - 33:22, 34:13, 51:9, 56:5, 56:8, 62:18 absent [1] - 43:13 absolute [1] - 23:25 Absolutely [2] - 74:17, 91:17 absolutely [1] - 34:16 accept [2] - 56:11, 57:6 accepted [2] - 21:1, 63:25 accepting [1] - 37:14 according [3] - 33:4, 75:25, 78:24 accordingly [1] - 81:22 Account [1] - 36:4 account [2] - 27:15, 28:3 accounts [2] - 82:19, 83:11 accusations [1] - 59:8									
0	23A [1] - 49:1 24th [1] - 47:16 25 [12] - 19:19, 21:15, 38:17, 55:18, 56:11, 57:4, 59:25, 64:15, 64:24, 65:18, 65:19, 66:18 25,978,568 [1] - 19:23 25-dollar [3] - 47:2, 57:6, 62:7 25-million-900-something-thousand [1] - 19:20 27 [1] - 19:18 27th [1] - 23:13 28 [1] - 9:12 298 [1] - 44:11 29th [1] - 8:24 2nd [5] - 5:19, 44:14, 45:9, 45:11, 81:8	3	3 [4] - 37:1, 89:22, 89:24, 90:2 3.5 [1] - 47:7 30 [1] - 78:12 304 [1] - 44:11 305 [1] - 44:12 338 [1] - 44:14 3:15 [1] - 53:16	4	40 [1] - 40:1 41,000 [1] - 33:19 43 [1] - 71:12 43,000 [1] - 71:3 46,000 [2] - 83:1, 83:4 461 [2] - 45:9, 45:12	5	5 [1] - 9:16 50 [1] - 80:1	50,000 [6] - 40:1, 42:11, 42:15, 43:8, 47:1, 71:10 531 [1] - 12:10 586 [2] - 45:9, 45:11	6	6 [6] - 37:5, 46:4, 47:9, 49:15, 49:19, 50:2 6.2 [4] - 90:22, 90:23, 90:24, 91:12 6.25 [1] - 90:6 655 [2] - 43:25, 44:2 661 [3] - 43:24, 44:1, 44:2 675 [1] - 44:2	7	729,000 [1] - 20:1 7th [2] - 43:23, 43:25	8	890,000 [1] - 33:18	9	90 [2] - 42:5, 42:10	A	A [1] - 75:24 ability [10] - 19:8, 19:11, 41:9, 50:3, 54:14, 65:9, 67:9, 67:24, 69:24, 91:3 able [6] - 33:22, 34:13, 51:9, 56:5, 56:8, 62:18 absent [1] - 43:13 absolute [1] - 23:25 Absolutely [2] - 74:17, 91:17 absolutely [1] - 34:16 accept [2] - 56:11, 57:6 accepted [2] - 21:1, 63:25 accepting [1] - 37:14 according [3] - 33:4, 75:25, 78:24 accordingly [1] - 81:22 Account [1] - 36:4 account [2] - 27:15, 28:3 accounts [2] - 82:19, 83:11 accusations [1] - 59:8	achieved [1] - 51:24 Act [6] - 4:22, 37:17, 76:16, 77:2, 77:25, 87:7 act [1] - 80:5 action [30] - 4:2, 4:18, 5:24, 5:25, 9:13, 15:21, 16:19, 22:6, 22:7, 25:21, 27:19, 32:5, 39:22, 47:25, 49:2, 55:1, 55:3, 58:20, 62:10, 66:7, 75:22, 80:1, 80:4, 84:1, 84:2, 86:2, 86:8, 86:9, 88:7 actionable [1] - 41:19 actions [7] - 39:17, 42:9, 44:20, 59:18, 76:1, 80:14, 80:16 actual [6] - 24:1, 24:4, 47:8, 49:20, 50:22, 74:16 added [2] - 29:2, 40:22 addition [4] - 6:10, 6:24, 26:11, 62:9 additional [6] - 22:19, 56:23, 85:16, 85:22, 87:1, 89:10 address [12] - 11:18, 13:25, 27:8, 54:6, 55:10, 69:3, 72:15, 79:13, 82:11, 83:21, 89:7 Address [1] - 72:16 addressed [4] - 20:4, 29:15, 55:17, 66:25 addresses [2] - 30:14, 59:23 addressing [3] - 11:12, 59:1, 76:21 adequacy [2] - 11:20, 77:16 adequate [3] - 53:7, 75:3, 89:3 administer [3] - 71:16, 71:22, 72:4 administrative [2] - 67:5, 73:19 administrator [8] - 30:13, 39:8, 39:15, 42:1, 42:8, 69:24, 70:3, 74:4 admission [3] - 6:25, 7:8, 8:17 admit [1] - 8:7 admitted [3] - 6:11, 6:22, 7:5 adopted [1] - 37:8 advance [1] - 84:24 advanced [2] - 13:11, 20:10 advances [1] - 57:21 adversary [1] - 58:25	advised [1] - 57:16 Advocates [1] - 39:11 affect [4] - 67:3, 73:13, 73:14, 91:2 affected [3] - 55:10, 56:7, 56:20 afforded [1] - 57:24 afield [1] - 52:10 afternoon [3] - 32:3, 34:11, 35:22 afterwards [1] - 17:1 agencies [6] - 41:5, 54:16, 54:18, 56:12, 57:8, 57:12 agency [1] - 66:2 Agent [7] - 47:19, 47:23, 52:25, 72:15, 72:17, 81:8, 81:15 aggregate [2] - 9:15, 37:4 ago [6] - 7:8, 14:18, 33:22, 54:20, 86:22 agree [7] - 62:14, 62:15, 67:12, 73:18, 74:2, 74:18, 92:20 agreed [7] - 17:17, 18:13, 19:6, 19:7, 63:12, 63:17, 63:22 agreement [24] - 5:5, 25:12, 27:8, 28:18, 33:4, 33:12, 36:21, 36:23, 36:24, 37:6, 42:25, 43:10, 48:20, 48:25, 49:4, 50:17, 52:18, 52:25, 64:9, 65:2, 81:25, 88:16, 89:23 agreements [2] - 27:18, 53:2 ahead [4] - 51:12, 63:5, 66:21, 71:24 aisle [1] - 25:10 akin [1] - 22:17 Alamada [1] - 13:12 Alemada [3] - 14:14, 40:22, 63:7 allegations [1] - 29:2 Allen [1] - 22:25 allocate [2] - 76:2, 78:23 allocation [11] - 37:7, 38:11, 38:14, 41:21, 45:25, 46:2, 47:11, 72:21, 72:24, 75:25, 79:12 allotted [1] - 79:11 allow [1] - 8:18 allowed [3] - 15:10, 42:6, 62:11 allowing [1] - 81:22 allows [2] - 36:24, 56:24 almost [3] - 24:15, 43:14, 46:10
1	1 [3] - 89:23, 90:3, 90:4 1.15 [1] - 49:8 1.5 [7] - 47:3, 47:5, 50:15, 50:16, 52:24, 75:20, 76:13 1.5E [1] - 88:2 100 [1] - 63:25 10th [1] - 58:5 11th [2] - 23:13, 58:15 13 [1] - 18:14 132 [2] - 44:10, 44:11 1332(d) [1] - 9:12 14 [2] - 18:24, 34:5 140 [2] - 38:17, 43:6 15 [1] - 49:15 15-day [1] - 84:23 150 [1] - 18:7 1500 [1] - 33:17 15th [4] - 23:16, 35:10, 35:15, 35:17 16 [4] - 18:18, 42:11, 71:25, 90:20 17 [2] - 17:20, 18:15 175 [2] - 18:8, 78:13 17th [1] - 47:15 18 [2] - 48:21, 81:3 18-million-dollar [1] - 19:13 1981 [1] - 43:25 1984 [1] - 44:10 1987 [1] - 81:8 1991 [1] - 45:10	23 [9] - 20:3, 53:5, 75:21, 75:22, 76:6, 76:13, 79:24, 79:25, 80:5 23A [1] - 49:1 24th [1] - 47:16 25 [12] - 19:19, 21:15, 38:17, 55:18, 56:11, 57:4, 59:25, 64:15, 64:24, 65:18, 65:19, 66:18 25,978,568 [1] - 19:23 25-dollar [3] - 47:2, 57:6, 62:7 25-million-900-something-thousand [1] - 19:20 27 [1] - 19:18 27th [1] - 23:13 28 [1] - 9:12 298 [1] - 44:11 29th [1] - 8:24 2nd [5] - 5:19, 44:14, 45:9, 45:11, 81:8	3	3 [4] - 37:1, 89:22, 89:24, 90:2 3.5 [1] - 47:7 30 [1] - 78:12 304 [1] - 44:11 305 [1] - 44:12 338 [1] - 44:14 3:15 [1] - 53:16	4	40 [1] - 40:1 41,000 [1] - 33:19 43 [1] - 71:12 43,000 [1] - 71:3 46,000 [2] - 83:1, 83:4 461 [2] - 45:9, 45:12	5	50,000 [6] - 40:1, 42:11, 42:15, 43:8, 47:1, 71:10 531 [1] - 12:10 586 [2] - 45:9, 45:11	6	6 [6] - 37:5, 46:4, 47:9, 49:15, 49:19, 50:2 6.2 [4] - 90:22, 90:23, 90:24, 91:12 6.25 [1] - 90:6 655 [2] - 43:25, 44:2 661 [3] - 43:24, 44:1, 44:2 675 [1] - 44:2	7	729,000 [1] - 20:1 7th [2] - 43:23, 43:25	8	890,000 [1] - 33:18	9	90 [2] - 42:5, 42:10	A	A [1] - 75:24 ability [10] - 19:8, 19:11, 41:9, 50:3, 54:14, 65:9, 67:9, 67:24, 69:24, 91:3 able [6] - 33:22, 34:13, 51:9, 56:5, 56:8, 62:18 absent [1] - 43:13 absolute [1] - 23:25 Absolutely [2] - 74:17, 91:17 absolutely [1] - 34:16 accept [2] - 56:11, 57:6 accepted [2] - 21:1, 63:25 accepting [1] - 37:14 according [3] - 33:4, 75:25, 78:24 accordingly [1] - 81:22 Account [1] - 36:4 account [2] - 27:15, 28:3 accounts [2] - 82:19, 83:11 accusations [1] - 59:8	achieved [1] - 51:24 Act [6] - 4:22, 37:17, 76:16, 77:2, 77:25, 87:7 act [1] - 80:5 action [30] - 4:2, 4:18, 5:24, 5:25, 9:13, 15:21, 16:19, 22:6, 22:7, 25:21, 27:19, 32:5, 39:22, 47:25, 49:2, 55:1, 55:3, 58:20, 62:10, 66:7, 75:22, 80:1, 80:4, 84:1, 84:2, 86:2, 86:8, 86:9, 88:7 actionable [1] - 41:19 actions [7] - 39:17, 42:9, 44:20, 59:18, 76:1, 80:14, 80:16 actual [6] - 24:1, 24:4, 47:8, 49:20, 50:22, 74:16 added [2] - 29:2, 40:22 addition [4] - 6:10, 6:24, 26:11, 62:9 additional [6] - 22:19, 56:23, 85:16, 85:22, 87:1, 89:10 address [12] - 11:18, 13:25, 27:8, 54:6, 55:10, 69:3, 72:15, 79:13, 82:11, 83:21, 89:7 Address [1] - 72:16 addressed [4] - 20:4, 29:15, 55:17, 66:25 addresses [2] - 30:14, 59:23 addressing [3] - 11:12, 59:1, 76:21 adequacy [2] - 11:20, 77:16 adequate [3] - 53:7, 75:3, 89:3 administer [3] - 71:16, 71:22, 72:4 administrative [2] - 67:5, 73:19 administrator [8] - 30:13, 39:8, 39:15, 42:1, 42:8, 69:24, 70:3, 74:4 admission [3] - 6:25, 7:8, 8:17 admit [1] - 8:7 admitted [3] - 6:11, 6:22, 7:5 adopted [1] - 37:8 advance [1] - 84:24 advanced [2] - 13:11, 20:10 advances [1] - 57:21 adversary [1] - 58:25	advised [1] - 57:16 Advocates [1] - 39:11 affect [4] - 67:3, 73:13, 73:14, 91:2 affected [3] - 55:10, 56:7, 56:20 afforded [1] - 57:24 afield [1] - 52:10 afternoon [3] - 32:3, 34:11, 35:22 afterwards [1] - 17:1 agencies [6] - 41:5, 54:16, 54:18, 56:12, 57:8, 57:12 agency [1] - 66:2 Agent [7] - 47:19, 47:23, 52:25, 72:15, 72:17, 81:8, 81:15 aggregate [2] - 9:15, 37:4 ago [6] - 7:8, 14:18, 33:22, 54:20, 86:22 agree [7] - 62:14, 62:15, 67:12, 73:18, 74:2, 74:18, 92:20 agreed [7] - 17:17, 18:13, 19:6, 19:7, 63:12, 63:17, 63:22 agreement [24] - 5:5, 25:12, 27:8, 28:18, 33:4, 33:12, 36:21, 36:23, 36:24, 37:6, 42:25, 43:10, 48:20, 48:25, 49:4, 50:17, 52:18, 52:25, 64:9, 65:2, 81:25, 88:16, 89:23 agreements [2] - 27:18, 53:2 ahead [4] - 51:12, 63:5, 66:21, 71:24 aisle [1] - 25:10 akin [1] - 22:17 Alamada

<p>amended [2] - 5:19, 53:5</p> <p>amendment [4] - 60:8, 60:19, 61:2, 61:6</p> <p>amount [12] - 9:15, 24:5, 33:17, 34:8, 37:12, 38:10, 42:6, 78:14, 78:17, 80:10, 90:7, 90:17</p> <p>analysis [1] - 12:1</p> <p>ancillary [2] - 41:3, 41:15</p> <p>Angeles [5] - 4:2, 15:1, 15:4, 32:5, 32:8</p> <p>animosity [1] - 87:2</p> <p>animus [1] - 77:21</p> <p>answer [1] - 60:24</p> <p>antagonistic [1] - 73:24</p> <p>ANTONELLI [11] - 9:3, 32:3, 32:9, 32:13, 32:16, 32:19, 32:24, 33:3, 35:8, 35:16, 35:18</p> <p>Antonelli [5] - 4:1, 6:13, 9:1, 17:20, 32:4</p> <p>Antonelli's [2] - 6:17, 6:22</p> <p>anyway [2] - 12:14, 70:9</p> <p>AP [2] - 44:10, 44:11</p> <p>apologize [2] - 91:10, 91:19</p> <p>appeal [4] - 16:1, 49:14, 49:25, 86:13</p> <p>appealing [2] - 16:17, 60:17</p> <p>appeals [1] - 49:18</p> <p>appear [1] - 8:1</p> <p>appearance [1] - 84:16</p> <p>appeared [2] - 10:10, 52:21</p> <p>appearing [2] - 4:1, 35:25</p> <p>Appellate [1] - 45:10</p> <p>applicability [1] - 37:18</p> <p>application [22] - 4:4, 5:15, 6:17, 6:22, 7:14, 7:20, 11:9, 13:10, 13:17, 16:13, 17:22, 29:13, 29:17, 76:6, 76:9, 76:10, 76:16, 77:2, 77:18, 77:25, 85:20, 87:7</p> <p>applications [2] - 6:10, 8:6</p> <p>apply [1] - 80:1</p> <p>apportionment [1] - 35:3</p>	<p>appreciate [3] - 54:9, 74:23, 82:16</p> <p>apprise [1] - 52:12</p> <p>approach [2] - 40:4, 88:25</p> <p>appropriate [6] - 43:19, 46:20, 82:4, 87:17, 88:18, 89:3</p> <p>appropriateness [2] - 77:17, 77:18</p> <p>approval [25] - 5:16, 5:17, 5:20, 5:22, 11:11, 11:25, 13:16, 14:2, 17:22, 22:4, 23:18, 25:11, 25:18, 26:3, 26:6, 26:10, 30:19, 37:8, 71:6, 71:7, 89:16, 89:18, 90:9, 90:25, 92:13</p> <p>approve [10] - 30:19, 37:11, 72:9, 79:7, 79:11, 84:22, 86:10, 91:5, 91:24, 92:5</p> <p>approved [7] - 21:18, 34:23, 45:15, 68:4, 68:8, 70:9, 89:6</p> <p>approves [1] - 90:12</p> <p>approving [1] - 61:5</p> <p>April [1] - 5:19</p> <p>Arbitration [1] - 37:17</p> <p>arbitration [10] - 5:12, 15:25, 16:16, 20:9, 20:24, 21:2, 37:19, 50:10, 52:1</p> <p>arbitrator [1] - 16:15</p> <p>area [2] - 40:21, 48:3</p> <p>arguably [2] - 20:20, 78:9</p> <p>argue [2] - 48:8, 51:25</p> <p>argued [2] - 40:5, 76:21</p> <p>arguing [1] - 62:2</p> <p>argument [15] - 11:22, 11:25, 23:23, 26:10, 40:4, 48:8, 58:6, 62:1, 78:10, 80:12, 80:24, 87:8, 88:2, 89:10, 91:24</p> <p>arguments [3] - 11:20, 59:1, 80:20</p> <p>arising [2] - 29:1, 56:7</p> <p>arose [1] - 68:4</p> <p>arrangement [2] - 76:5, 81:19</p> <p>Article [5] - 37:1, 37:5, 89:22, 89:24, 90:2</p> <p>ascribed [1] - 63:12</p> <p>asserted [1] - 20:17</p> <p>asserting [2] - 31:4, 31:11</p> <p>assertions [1] - 7:10</p> <p>assess [1] - 50:22</p> <p>assessed [5] - 20:20,</p>	<p>32:17, 32:22, 36:7, 64:14</p> <p>assessment [4] - 13:14, 56:9, 76:8</p> <p>assigned [1] - 41:5</p> <p>assistance [1] - 21:17</p> <p>associated [5] - 26:9, 28:8, 28:16, 56:5, 73:19</p> <p>Association [1] - 39:11</p> <p>assume [1] - 35:6</p> <p>assuming [2] - 52:19, 90:11</p> <p>AT&T [41] - 4:21, 5:6, 12:22, 13:8, 13:15, 14:6, 14:10, 15:11, 15:15, 15:18, 16:1, 16:8, 16:9, 18:2, 18:10, 18:17, 19:24, 20:9, 20:15, 21:3, 21:8, 21:16, 21:22, 27:15, 28:2, 28:19, 29:21, 31:12, 32:16, 36:3, 54:3, 55:23, 56:12, 56:25, 57:3, 64:11, 65:3, 65:24, 75:8, 83:10, 90:5</p> <p>attempted [1] - 13:4</p> <p>attention [1] - 89:22</p> <p>ATTM [7] - 4:21, 37:16, 37:24, 40:13, 40:23, 49:15, 51:15</p> <p>attorney [13] - 7:1, 7:9, 8:8, 28:13, 35:20, 49:9, 54:8, 57:14, 58:9, 58:14, 69:2, 84:10, 92:22</p> <p>attorneys [6] - 5:24, 5:25, 6:11, 46:4, 53:3, 53:14</p> <p>attorneys' [20] - 11:22, 25:9, 25:13, 34:25, 45:21, 46:19, 47:12, 48:6, 48:22, 52:15, 53:8, 69:1, 69:9, 75:19, 79:23, 80:9, 87:10, 88:24, 91:6, 91:8</p> <p>August [2] - 23:13</p> <p>authority [1] - 47:19</p> <p>authorized [4] - 49:3, 49:4, 49:5</p> <p>available [5] - 35:15, 57:16, 72:1, 80:15, 80:18</p> <p>avoid [2] - 29:17, 44:18</p> <p>avoided [1] - 54:21</p> <p>await [1] - 58:16</p> <p>award [3] - 72:1, 81:11, 84:11</p> <p>aware [2] - 13:23, 20:13</p>	<p>Ayyad [1] - 20:19</p> <p>B</p> <p>backgrounds [1] - 57:22</p> <p>bad [2] - 26:20, 29:1</p> <p>bag [1] - 27:6</p> <p>bandied [1] - 22:14</p> <p>banner [3] - 40:23, 40:24, 62:5</p> <p>bar [3] - 8:10, 66:4, 66:7</p> <p>Barry [1] - 5:4</p> <p>base [1] - 23:6</p> <p>Based [2] - 7:10, 39:25</p> <p>based [11] - 8:17, 18:25, 20:18, 26:22, 38:17, 40:2, 43:20, 46:4, 58:6, 81:3, 81:12</p> <p>basis [6] - 9:16, 26:7, 29:9, 45:17, 64:12, 88:13</p> <p>beans [1] - 86:15</p> <p>bear [2] - 32:10, 75:23</p> <p>become [1] - 61:8</p> <p>becomes [1] - 61:14</p> <p>bed [1] - 21:3</p> <p>began [1] - 5:8</p> <p>beginning [1] - 78:8</p> <p>behalf [7] - 4:1, 4:12, 27:19, 29:3, 32:4, 35:25, 53:14</p> <p>behind [2] - 13:19, 63:19</p> <p>belief [2] - 55:9, 57:5</p> <p>belongs [1] - 85:18</p> <p>beneficial [1] - 59:5</p> <p>benefit [5] - 25:4, 47:2, 80:10, 89:4, 89:5</p> <p>benefits [4] - 24:25, 25:2, 25:3</p> <p>best [4] - 55:23, 71:2, 81:10, 81:13</p> <p>better [5] - 19:15, 19:17, 39:12, 45:23, 88:12</p> <p>between [5] - 23:14, 51:21, 52:19, 76:5, 77:12</p> <p>beyond [1] - 71:7</p> <p>big [3] - 24:22, 47:10, 51:24</p> <p>biggest [1] - 34:7</p> <p>bill [6] - 23:3, 23:7, 36:7, 58:2, 67:19, 67:21</p> <p>Bill's [1] - 12:25</p> <p>billing [4] - 22:18, 51:1, 51:17</p>	<p>bills [5] - 23:7, 23:8, 23:9, 55:24, 57:24</p> <p>bit [6] - 21:23, 22:12, 22:14, 22:22, 67:25, 69:14</p> <p>bizarre [1] - 49:19</p> <p>Blackberry [2] - 27:1, 28:6</p> <p>Blockbuster [1] - 46:14</p> <p>blocking [1] - 40:24</p> <p>Boch [14] - 46:15, 46:16, 47:23, 50:8, 50:9, 50:11, 51:14, 51:21, 52:2, 77:13, 84:15, 84:17, 85:2, 87:19</p> <p>Boch's [1] - 52:8</p> <p>Boden [1] - 45:8</p> <p>bond [1] - 50:5</p> <p>Book [1] - 42:22</p> <p>bore [1] - 28:9</p> <p>bottom [1] - 34:3</p> <p>bounty [1] - 53:8</p> <p>bracket [1] - 40:8</p> <p>Brad [3] - 47:22, 50:7, 52:9</p> <p>breach [1] - 50:10</p> <p>breath [1] - 81:22</p> <p>Brian [1] - 78:5</p> <p>brief [3] - 63:11, 78:4, 82:13</p> <p>briefed [2] - 47:18, 75:20</p> <p>briefing [5] - 21:24, 25:1, 25:15, 26:5, 87:7</p> <p>briefly [6] - 12:21, 72:14, 74:22, 75:16, 82:12, 82:14</p> <p>briefs [3] - 5:23, 86:19, 86:20</p> <p>bring [4] - 13:4, 26:2, 51:17, 55:22</p> <p>bringing [3] - 16:16, 56:2, 77:1</p> <p>broad [1] - 41:3</p> <p>broadly [1] - 71:5</p> <p>broadness [1] - 40:11</p> <p>broken [1] - 69:19</p> <p>brought [4] - 66:16, 75:23, 77:20, 82:11</p> <p>Brown [1] - 10:13</p> <p>bucks [2] - 64:15, 64:24</p> <p>bump [1] - 71:5</p> <p>bunch [1] - 76:18</p> <p>burden [3] - 39:6, 67:5, 76:15</p> <p>bureaus [1] - 57:1</p> <p>Cursor [2] - 13:12, 25:23</p> <p>business [1] - 90:25</p> <p>bust [1] - 48:23</p>
--	---	--	--	--

bust-out [1] - 48:23 button [1] - 69:25	77:22, 78:11, 79:13, 79:18, 80:20, 80:22, 81:1, 81:6, 81:8, 81:13, 81:14, 81:15, 81:16, 81:24, 82:6, 83:14, 84:7, 84:9, 84:17, 84:18, 84:21, 85:17, 87:16, 88:10, 91:12	39:14 certified [2] - 16:10, 20:12 cetera [2] - 5:14, 40:18 challenged [2] - 24:18, 67:11 chance [1] - 37:24 change [4] - 28:21, 60:6, 69:8 changes [1] - 38:3 changing [2] - 60:1, 61:3 Chapman [1] - 50:8 charge [8] - 24:5, 41:13, 54:13, 59:15, 66:4, 66:11, 67:15, 67:16 charged [10] - 4:21, 4:24, 5:7, 36:7, 46:9, 54:4, 54:12, 62:16, 63:4, 65:16 charges [2] - 67:19, 67:20 charitable [1] - 26:19 charity [4] - 46:7, 46:8, 79:5, 79:11 chart [1] - 38:16 check [4] - 49:15, 90:11, 91:12, 92:17 checked [3] - 39:7, 42:3, 52:7 checks [5] - 43:17, 43:18, 70:23, 80:17 Chief [1] - 14:11 choose [2] - 19:9, 52:4 chosen [1] - 59:2 Christopher [2] - 7:3, 36:1 CIC [1] - 44:5 Cicelski [1] - 44:3 CICELSKI [1] - 44:3 Cingular [4] - 14:6, 14:9, 14:15, 51:15 Circuit [6] - 16:1, 43:23, 43:25, 50:12, 81:8, 86:13 circulation [1] - 23:2 circumstance [1] - 92:12 circumstances [3] - 57:6, 57:25, 58:6 cite [3] - 44:9, 47:19, 57:9 cited [2] - 53:1, 75:21 citing [1] - 44:10 citizen [1] - 5:5 claim [29] - 4:18, 20:15, 31:3, 39:10, 39:12, 40:12, 40:13, 40:18, 41:25, 42:15, 43:14, 45:4, 58:10, 62:13, 62:20, 64:18,	64:25, 65:12, 66:3, 66:15, 66:17, 70:20, 70:21, 71:21, 74:3, 74:6, 74:7, 80:17 claimant [1] - 40:1 claimants [5] - 45:7, 60:8, 69:16, 69:22, 70:16 claimed [2] - 18:25, 42:7 claiming [2] - 41:8, 47:1 claims [40] - 23:21, 27:17, 30:8, 30:9, 30:13, 30:15, 31:8, 31:11, 31:12, 31:13, 39:14, 40:2, 41:3, 41:10, 41:15, 42:1, 42:4, 42:8, 44:22, 49:17, 64:12, 67:23, 68:2, 69:24, 70:3, 70:7, 70:17, 70:19, 71:6, 71:10, 71:11, 71:20, 72:3, 73:19, 78:24, 79:2, 79:3, 79:8, 79:13, 80:7 clarify [2] - 18:22, 26:6 Clark [1] - 10:13 class [107] - 4:18, 5:18, 5:24, 9:13, 9:14, 11:8, 11:17, 13:5, 16:3, 16:9, 16:10, 18:11, 18:19, 19:8, 20:16, 20:22, 21:5, 21:13, 24:9, 24:12, 25:14, 27:19, 29:16, 30:2, 30:21, 32:11, 32:15, 36:2, 37:1, 38:2, 38:14, 38:21, 38:23, 39:8, 39:17, 39:21, 39:22, 40:5, 41:6, 42:8, 44:19, 45:16, 46:8, 47:2, 47:6, 47:8, 47:24, 48:16, 49:2, 49:13, 49:16, 49:17, 49:25, 51:1, 52:19, 55:1, 55:2, 55:3, 56:5, 56:8, 57:14, 57:15, 58:9, 58:25, 59:18, 60:21, 60:24, 63:13, 63:17, 64:10, 71:25, 72:21, 72:22, 73:14, 73:23, 74:8, 74:25, 75:22, 76:1, 76:2, 76:4, 77:13, 77:14, 78:5, 79:1, 79:6, 79:11, 79:25, 80:4, 80:10, 80:14, 80:16, 81:5, 81:10, 81:20, 81:23, 82:1, 82:5, 84:6, 84:25, 87:2, 88:7, 89:4	classes [2] - 21:14, 29:3 classwide [1] - 16:24 clause [1] - 48:23 clear [6] - 12:12, 48:25, 49:10, 63:9, 90:13, 91:10 clearly [5] - 85:14, 85:22, 86:1, 88:14, 88:15 Clerk [1] - 31:24 clerk [2] - 6:7, 9:5 CLERK [1] - 8:25 client [8] - 8:10, 31:11, 67:6, 69:15, 91:11, 92:4, 92:15, 92:18 client's [2] - 70:8, 72:8 clients [1] - 32:20 close [2] - 72:22, 74:9 closing [1] - 23:23 co [1] - 52:23 co-counsel [1] - 52:23 Code [1] - 9:12 Colisimo [8] - 25:21, 26:12, 27:4, 27:18, 27:25, 28:2, 28:4, 28:22 collect [2] - 65:4, 65:10 collection [8] - 41:4, 54:18, 62:10, 65:20, 66:2, 66:7, 66:16, 75:8 Collins [4] - 14:11, 15:6, 15:8, 15:20 Colon [2] - 26:17, 28:25 color [1] - 57:22 combined [1] - 59:20 coming [5] - 10:18, 12:10, 12:14, 16:23, 69:15 comments [1] - 75:17 commit [1] - 76:24 common [6] - 36:22, 37:2, 37:3, 37:5, 37:6, 38:1 communications [1] - 10:19 Communications [1] - 4:22 companies [1] - 29:12 Company [2] - 44:4, 44:8 company [3] - 4:25, 39:20, 62:4 compares [1] - 18:13 compel [3] - 5:12, 15:25, 16:16 compensate [1] - 53:3 competition [2] - 51:1, 53:6
C				
C-i-c-e-l-s-k-i [1] - 44:6 CAFA [1] - 53:5 calculation [1] - 44:19 California [6] - 5:5, 14:12, 15:3, 16:10, 33:14, 81:14 cancellation [2] - 4:25, 5:3 cancelled [2] - 56:13, 59:15 cannot [2] - 44:22, 49:11 cap [3] - 38:13, 73:9 capable [1] - 31:7 card [5] - 18:23, 27:21, 28:6, 28:12, 28:14 cards [4] - 18:21, 28:10, 43:2, 47:7 care [1] - 72:18 Carl [1] - 11:3 Carla [1] - 10:22 carrier [3] - 18:16, 29:3, 77:1 carriers [6] - 18:5, 23:25, 24:3, 24:11, 24:24, 65:4 carrying [1] - 62:5 case [117] - 5:4, 6:1, 8:11, 12:22, 12:25, 13:6, 14:9, 14:10, 14:15, 14:17, 15:4, 15:13, 15:23, 16:2, 16:8, 16:9, 16:13, 16:14, 16:15, 16:20, 16:25, 20:10, 20:14, 20:17, 20:19, 20:23, 21:2, 21:6, 23:21, 23:22, 24:22, 25:20, 25:21, 25:24, 26:1, 26:12, 27:18, 27:25, 29:25, 33:5, 33:16, 43:13, 43:23, 44:11, 44:23, 45:6, 45:8, 47:4, 47:19, 47:25, 48:8, 49:16, 49:20, 50:13, 50:25, 51:3, 51:11, 51:13, 51:18, 51:22, 52:21, 52:25, 53:1, 53:4, 55:3, 57:1, 58:23, 61:16, 62:1, 62:3, 63:2, 63:13, 63:15, 64:3, 64:4, 67:18, 69:17, 71:2, 72:17, 75:9, 75:15, 75:23, 77:11, 77:13, 77:14, 77:15,	cases [37] - 12:23, 13:1, 13:2, 13:7, 13:12, 14:11, 14:14, 15:9, 16:5, 20:6, 20:11, 20:12, 24:19, 24:20, 24:21, 25:5, 25:16, 37:20, 37:22, 40:3, 43:21, 44:15, 46:25, 55:1, 60:13, 68:10, 70:2, 70:15, 74:10, 74:11, 75:21, 75:22, 76:1, 79:3, 80:8, 86:25 cash [5] - 18:18, 39:25, 42:7, 43:2, 55:17 Cash [1] - 46:16 cashed [1] - 43:18 categories [1] - 10:2 caused [1] - 55:7 cave [1] - 22:12 cease [1] - 65:4 Cecchi [14] - 6:15, 12:3, 12:16, 33:6, 33:21, 34:1, 34:10, 55:19, 62:4, 72:13, 72:18, 82:11, 88:4 CECCHI [23] - 6:16, 7:7, 10:6, 10:17, 10:19, 12:4, 12:20, 34:16, 35:15, 55:20, 72:14, 72:17, 72:20, 73:11, 73:15, 73:21, 74:1, 74:17, 74:22, 87:23, 88:20, 90:1, 92:21 Cecchi's [3] - 21:16, 55:21, 68:7 Cell [1] - 40:23 cell [4] - 13:11, 27:1, 27:10, 59:21 Center [1] - 37:15 centers [1] - 51:21 Central [3] - 14:12, 15:2, 15:24 cents [1] - 83:12 cert [2] - 21:1, 37:14 certain [3] - 18:1, 23:5, 57:22 certainly [5] - 41:8, 42:18, 58:7, 74:1, 85:19 Certainly [2] - 35:1, 89:2 certification [1] -			

<p>complained [1] - 41:7</p> <p>complaint [2] - 31:14, 54:24</p> <p>complete [2] - 77:8, 77:22</p> <p>completely [3] - 37:19, 43:13, 50:14</p> <p>complex [1] - 20:8</p> <p>complexity [1] - 20:6</p> <p>composed [2] - 10:12, 11:3</p> <p>compromise [4] - 37:22, 63:24, 64:4, 64:6</p> <p>compromised [1] - 54:15</p> <p>computer [1] - 27:22</p> <p>concealed [1] - 50:19</p> <p>concept [2] - 74:5, 74:10</p> <p>conceptually [1] - 74:11</p> <p>concern [5] - 55:16, 70:24, 72:25, 73:3</p> <p>concerned [2] - 59:11, 78:7</p> <p>concerning [1] - 59:7</p> <p>concerns [2] - 55:10, 59:24</p> <p>concluded [1] - 16:12</p> <p>concludes [1] - 14:5</p> <p>concluding [1] - 82:14</p> <p>condemnation [1] - 56:14</p> <p>Conduct [1] - 49:6</p> <p>confer [1] - 31:24</p> <p>conference [3] - 7:9, 28:13, 33:24</p> <p>conflict [1] - 40:7</p> <p>Congress [1] - 37:18</p> <p>connection [6] - 10:8, 84:7, 84:8, 84:9, 84:10, 85:17</p> <p>Connolly [7] - 6:19, 7:15, 12:5, 19:15, 21:20, 21:22, 74:3</p> <p>CONNOLLY [62] - 6:20, 7:16, 12:6, 21:21, 26:19, 26:25, 27:3, 27:10, 27:12, 28:24, 29:23, 30:1, 30:4, 30:9, 30:22, 31:1, 31:10, 31:17, 31:19, 31:22, 61:23, 62:6, 62:21, 63:6, 64:17, 64:20, 64:22, 65:1, 65:7, 65:13, 65:21, 65:24, 66:6, 66:13, 66:22, 67:2, 67:5, 68:12, 68:14, 68:20, 68:24, 69:5, 71:3, 71:18, 72:7, 89:12, 89:15, 89:21,</p>	<p>90:4, 90:15, 90:19, 90:23, 91:4, 91:10, 91:17, 91:19, 91:22, 92:1, 92:8, 92:11, 92:19, 92:25</p> <p>Connolly's [1] - 73:3</p> <p>consi [1] - 68:2</p> <p>consider [6] - 9:23, 21:7, 40:10, 58:3, 60:18, 86:5</p> <p>consideration [3] - 58:23, 68:10, 88:23</p> <p>considerations [2] - 73:17</p> <p>considered [5] - 18:12, 19:13, 19:16, 54:13, 58:24</p> <p>consistent [1] - 37:5</p> <p>consolidated [3] - 14:11, 15:4, 16:5</p> <p>constitute [1] - 4:24</p> <p>constitutes [1] - 92:13</p> <p>construed [1] - 58:20</p> <p>Consulting's [1] - 22:25</p> <p>Consumer [2] - 4:23, 39:11</p> <p>consumers [2] - 39:3, 39:4</p> <p>contacted [1] - 6:7</p> <p>contain [1] - 29:22</p> <p>contained [2] - 5:6, 7:11</p> <p>contains [1] - 64:10</p> <p>contemplated [2] - 45:6, 87:15</p> <p>contemplates [2] - 43:10, 53:6</p> <p>contend [2] - 62:11, 78:8</p> <p>contention [1] - 33:13</p> <p>continue [7] - 9:10, 30:16, 55:6, 62:11, 62:12, 65:10, 65:11</p> <p>continued [1] - 20:1</p> <p>continues [3] - 46:14, 49:20, 57:21</p> <p>contract [5] - 28:21, 78:8, 78:12, 78:18, 78:23</p> <p>contracted [4] - 26:8, 28:4, 28:5, 28:6</p> <p>contracts [2] - 14:7, 28:7</p> <p>contractual [1] - 28:1</p> <p>contributed [1] - 81:12</p> <p>control [1] - 80:3</p> <p>controlling [1] - 79:24</p> <p>controversy [1] - 9:15</p> <p>conversation [4] - 33:21, 34:19, 92:2, 92:4</p>	<p>convert [3] - 19:8, 19:11, 25:7</p> <p>Cook [1] - 50:13</p> <p>coordinate [1] - 7:21</p> <p>copy [3] - 9:4, 9:7, 87:24</p> <p>corners [2] - 85:15, 88:1</p> <p>correct [6] - 32:24, 35:8, 62:14, 65:14, 66:11, 83:1</p> <p>Correct [3] - 56:19, 56:22, 86:14</p> <p>correctly [1] - 23:16</p> <p>correspondence [1] - 34:4</p> <p>correspondingly [1] - 27:16</p> <p>cost [4] - 33:19, 73:19, 81:18, 82:3</p> <p>costs [3] - 33:6, 33:18, 37:4</p> <p>counsel [65] - 4:3, 5:25, 6:4, 6:5, 9:19, 10:1, 11:6, 11:8, 11:9, 11:14, 11:17, 12:8, 13:5, 17:19, 25:14, 25:22, 26:12, 33:9, 35:3, 35:4, 38:14, 40:5, 49:9, 49:16, 52:19, 52:20, 52:23, 53:3, 53:6, 53:9, 60:21, 60:25, 61:14, 61:20, 63:22, 64:10, 71:25, 72:21, 76:2, 77:5, 77:13, 77:14, 77:15, 80:9, 81:5, 81:6, 81:10, 81:21, 81:23, 82:1, 82:5, 84:2, 84:6, 84:15, 84:18, 84:25, 86:17, 87:2, 89:5, 89:7</p> <p>Counsel [5] - 4:9, 51:3, 51:5, 52:10, 86:21</p> <p>counsels [2] - 58:23, 58:25</p> <p>count [1] - 30:6</p> <p>counterclaim [1] - 66:9</p> <p>counterclaims [1] - 20:18</p> <p>country [4] - 13:2, 24:16, 24:17, 55:2</p> <p>County [6] - 13:12, 14:14, 40:22, 50:13, 52:9, 77:9</p> <p>couple [3] - 42:16, 48:11, 74:24</p> <p>course [7] - 4:20, 8:9, 11:5, 46:11, 48:21, 70:10, 89:9</p> <p>court [17] - 5:9, 6:6,</p>	<p>8:17, 8:20, 10:3, 15:6, 24:20, 25:5, 51:8, 53:21, 76:20, 79:25, 80:23, 81:19, 81:22, 81:25, 85:22</p> <p>Court [70] - 4:2, 7:12, 8:15, 9:8, 9:11, 9:17, 9:23, 11:18, 14:21, 14:22, 14:24, 16:6, 16:17, 16:18, 20:11, 21:1, 25:12, 29:19, 30:18, 31:24, 32:5, 34:21, 35:7, 35:17, 37:8, 37:14, 40:10, 45:10, 47:14, 48:19, 50:12, 50:14, 51:24, 52:12, 54:5, 55:2, 55:15, 56:3, 58:3, 58:14, 58:16, 59:25, 60:5, 60:14, 60:18, 61:4, 61:5, 61:13, 61:15, 63:8, 63:11, 68:8, 70:10, 73:17, 75:12, 75:15, 77:24, 79:19, 81:9, 83:2, 84:14, 85:5, 85:15, 85:23, 87:3, 87:5, 87:6, 87:10, 87:18, 88:16</p> <p>COURT [175] - 4:6, 4:8, 4:13, 6:19, 6:21, 7:15, 7:17, 7:19, 8:5, 8:22, 9:1, 9:5, 10:7, 10:18, 10:21, 12:5, 12:11, 14:3, 14:19, 17:3, 17:5, 17:11, 19:3, 19:22, 21:10, 21:20, 26:18, 26:21, 27:1, 27:7, 27:11, 28:23, 29:18, 29:24, 30:2, 30:8, 30:17, 30:23, 31:8, 31:16, 31:18, 31:20, 31:25, 32:7, 32:10, 32:14, 32:18, 32:22, 33:2, 34:14, 34:18, 35:12, 35:17, 35:19, 35:23, 36:5, 36:8, 36:10, 36:12, 36:14, 36:16, 36:19, 38:19, 38:22, 40:14, 40:17, 41:10, 41:23, 44:1, 44:5, 44:7, 44:9, 44:13, 44:15, 45:11, 45:13, 45:19, 45:22, 46:1, 48:5, 51:3, 51:5, 51:8, 51:19, 52:10, 52:14, 53:11, 53:13, 53:21, 54:1, 54:11, 56:4, 56:17, 56:20, 56:23, 61:11, 61:19, 62:2, 62:17, 63:5, 64:14, 64:18, 64:21, 64:23, 65:6, 65:12, 65:14, 65:22, 66:3,</p>	<p>66:8, 66:20, 66:25, 67:3, 68:6, 68:13, 68:16, 68:22, 69:2, 70:25, 71:15, 72:6, 72:12, 72:16, 72:18, 73:6, 73:13, 73:16, 73:22, 74:13, 74:20, 78:15, 80:6, 82:9, 82:12, 82:14, 82:20, 82:22, 83:2, 83:16, 83:19, 83:23, 84:4, 84:7, 84:9, 84:13, 85:4, 85:8, 85:10, 85:13, 85:25, 86:10, 86:14, 86:21, 86:24, 87:22, 88:4, 88:21, 89:14, 89:19, 89:24, 90:3, 90:14, 90:17, 90:22, 91:2, 91:7, 91:15, 91:18, 91:20, 91:23, 92:3, 92:9, 92:18, 92:20, 92:24</p> <p>Court's [7] - 12:21, 13:25, 54:10, 57:19, 58:16, 59:7, 60:17</p> <p>courteous [1] - 63:10</p> <p>courtesy [1] - 77:24</p> <p>courts [7] - 59:6, 60:7, 80:3, 80:15, 80:19, 81:11</p> <p>covered [4] - 20:7, 25:24, 27:13, 64:15</p> <p>crazy [1] - 6:25</p> <p>create [2] - 85:21, 87:1</p> <p>created [2] - 54:15, 60:3</p> <p>creating [1] - 73:4</p> <p>credit [30] - 41:4, 41:6, 41:12, 41:13, 47:10, 54:14, 54:15, 54:16, 55:7, 55:15, 56:7, 56:12, 56:15, 56:20, 57:1, 57:7, 57:12, 57:15, 59:2, 59:11, 59:17, 60:1, 60:3, 60:7, 61:6, 63:16, 66:9, 66:12, 67:25, 75:13</p> <p>criticize [1] - 22:21</p> <p>cross [2] - 39:7, 47:24</p> <p>cross-checked [1] - 39:7</p> <p>cross-examination [1] - 47:24</p> <p>culminated [1] - 5:14</p> <p>current [5] - 23:5, 29:21, 36:3, 48:20, 51:20</p> <p>customer [4] - 26:8, 29:1, 32:16, 54:3</p> <p>customers [11] - 4:24, 22:10, 23:5, 23:6, 23:9, 24:17, 24:23,</p>
--	--	---	---	---

29:15, 30:3, 30:18, 30:20 cut [1] - 49:15 Cy [1] - 43:13 cy [19] - 18:20, 38:10, 39:22, 43:2, 43:9, 43:12, 43:18, 44:17, 45:5, 45:15, 47:10, 69:8, 69:12, 69:14, 69:17, 70:6, 70:13, 73:9, 86:4 cycle [1] - 60:6	22:13, 28:1, 28:19 declaratory [2] - 84:1, 86:8 deemed [1] - 15:22 defamation [5] - 55:7, 55:16, 57:16, 59:11, 67:24 defeating [1] - 59:20 defendant [9] - 5:11, 9:15, 14:6, 16:16, 18:20, 20:21, 21:22, 56:25, 79:5 defendants [8] - 18:2, 29:8, 29:10, 31:5, 70:2, 75:11, 75:15, 81:2 defending [2] - 23:21, 76:25 defense [11] - 5:25, 11:9, 11:18, 12:18, 24:9, 40:18, 58:1, 61:19, 66:6, 66:8, 66:15 defer [1] - 70:9 definitely [2] - 41:14, 47:20 definition [1] - 30:20 delay [1] - 60:22 deleterious [1] - 60:20 demeaning [1] - 59:3 demonstration [1] - 28:10 denied [4] - 5:12, 15:8, 15:25, 60:4 denying [2] - 15:21, 16:15 deposed [1] - 16:4 depositions [2] - 14:25, 15:17 designed [2] - 72:21, 79:12 desire [1] - 6:7 despite [1] - 62:1 determine [4] - 8:7, 15:11, 56:8, 81:10 determined [1] - 54:22 develop [1] - 49:12 device [6] - 26:8, 27:20, 28:3, 28:20, 29:24, 44:18 devices [3] - 27:13, 28:17, 28:21 dialog [1] - 31:7 Dias [8] - 4:2, 32:4, 32:11, 32:13, 32:20, 34:7, 49:9, 52:21 Dias' [1] - 17:19 difference [1] - 18:9 differences [1] - 56:6 different [15] - 7:24, 9:14, 13:5, 18:2, 18:4, 23:20, 24:13,	46:17, 63:2, 63:6, 68:11, 68:18, 74:14, 92:1, 92:3 difficult [3] - 61:14, 61:22, 70:2 diminish [1] - 85:1 direct [3] - 22:11, 22:19, 34:19 directed [1] - 75:18 directing [1] - 35:4 directly [2] - 37:1, 41:16 discovered [1] - 19:25 discovery [6] - 5:10, 14:25, 15:10, 15:14, 16:3, 16:9 discretion [6] - 53:3, 72:10, 74:18, 75:24, 76:4, 76:10 discuss [1] - 34:13 disfavored [1] - 69:18 disingenuous [1] - 55:23 dismiss [1] - 29:7 dismissed [4] - 16:2, 26:1, 29:10, 77:2 disparage [1] - 58:20 dispute [4] - 40:15, 49:8, 49:10, 77:20 disputes [1] - 14:25 disseminated [1] - 30:6 distinguish [2] - 26:7, 26:22 distinguishing [1] - 12:24 distress [1] - 60:12 distribute [5] - 39:16, 42:12, 73:10, 81:23, 82:1 distributed [3] - 37:7, 48:16, 91:16 distribution [14] - 36:23, 36:25, 37:3, 38:1, 38:9, 38:16, 39:21, 42:6, 44:19, 72:2, 78:6, 78:19, 92:9 District [6] - 7:23, 14:12, 15:3, 15:24, 45:10, 87:18 divide [1] - 70:7 dividing [1] - 70:15 division [2] - 50:18, 50:19 docket [1] - 12:9 document [1] - 92:6 Document [1] - 9:8 documentation [1] - 11:23 documents [2] - 15:15, 28:2 dollar [4] - 23:25, 24:3, 48:22, 83:12	dollars [14] - 18:24, 42:17, 43:1, 55:18, 56:12, 57:4, 59:25, 65:18, 65:19, 66:18, 67:22, 67:24, 73:7 done [9] - 29:5, 35:2, 39:17, 42:8, 50:19, 59:14, 68:19, 72:5, 77:4 Donna [1] - 52:3 double [1] - 47:8 doubt [1] - 71:25 Douglas [3] - 17:3, 17:7, 23:13 down [7] - 29:14, 43:1, 43:5, 51:9, 65:25, 78:21, 80:22 drew [1] - 69:6 drive [1] - 71:9 due [2] - 59:19, 90:24 duration [2] - 20:6, 23:12 during [5] - 4:20, 6:9, 15:14, 18:11, 59:17 During [1] - 14:23	encourage [2] - 70:17, 70:19 end [13] - 5:2, 42:5, 42:10, 66:18, 70:4, 78:12, 78:22, 85:13, 87:10, 88:13, 90:7, 90:12 energy [1] - 76:25 enforceable [1] - 16:20 enjoin [2] - 76:16, 85:17 enjoined [1] - 77:3 enjoy [2] - 13:16, 14:2 entail [2] - 60:23, 83:10 enter [1] - 36:25 entered [1] - 5:13 entertain [2] - 85:19, 87:7 entire [2] - 45:7, 90:18 entirely [2] - 21:3, 56:16 entitled [2] - 55:15, 60:9 entry [3] - 12:9, 90:9, 90:25 equipment [1] - 26:23 equitable [1] - 81:23 Eric [1] - 50:12 escrow [8] - 90:6, 90:8, 90:21, 90:24, 91:7, 91:8, 92:7, 92:10 especially [1] - 38:10 essentially [3] - 84:20, 86:3, 86:7 Essentially [1] - 41:24 establishing [1] - 21:5 et [2] - 5:14, 40:18 ETF [77] - 4:3, 5:6, 5:7, 12:23, 13:2, 17:20, 18:4, 18:5, 18:11, 19:9, 21:12, 23:24, 24:3, 24:5, 24:8, 24:13, 24:16, 25:7, 25:14, 26:9, 26:12, 27:16, 29:22, 31:9, 31:12, 32:17, 32:22, 32:23, 33:5, 36:5, 37:25, 40:12, 40:14, 40:19, 41:2, 41:4, 41:12, 41:13, 47:14, 52:19, 52:20, 53:9, 54:4, 54:22, 55:5, 55:7, 55:13, 55:17, 56:13, 57:8, 57:12, 57:13, 58:10, 59:12, 60:4, 62:8, 62:11, 62:19, 62:20, 63:1, 63:2, 63:3, 64:14, 64:25, 65:16, 65:17, 67:16, 67:22, 68:2, 75:6, 78:21,
D		E		
damage [3] - 13:9, 20:14, 56:6 damaged [4] - 43:16, 72:23, 78:14, 78:17 damages [25] - 20:16, 20:20, 21:5, 24:1, 24:4, 38:13, 41:4, 41:12, 41:17, 41:19, 42:18, 42:19, 44:19, 56:10, 65:12, 66:12, 70:20, 72:22, 73:2, 74:9, 74:16, 78:9 danger [1] - 72:25 data [2] - 28:6, 80:7 date [3] - 5:20, 90:9, 90:25 dated [1] - 58:5 dates [3] - 5:21, 23:15 David [1] - 10:12 days [10] - 16:23, 16:25, 17:13, 33:22, 42:5, 42:10, 49:15, 64:2, 78:12, 90:25 deadline [1] - 49:14 deal [12] - 4:6, 11:19, 11:23, 13:15, 34:23, 46:19, 52:15, 54:9, 61:15, 64:2, 83:10, 83:13 dealing [4] - 21:2, 39:19, 71:1, 77:25 dealt [1] - 24:21 debilitating [1] - 55:6 debt [2] - 75:9, 75:11 debts [3] - 41:5, 75:10, 75:12 decency [1] - 77:23 decide [4] - 34:25, 69:25, 88:5, 88:16 decided [1] - 13:5 decision [9] - 11:19, 15:21, 16:19, 48:7, 58:16, 59:9, 61:7, 71:9, 86:16 decisions [1] - 59:6 declaration [2] - 22:25, 84:25 declarations [3] -		early [8] - 4:19, 24:2, 46:13, 49:11, 54:25, 67:8, 67:18, 78:22 easiest [1] - 8:2 easy [5] - 42:7, 54:9, 64:5, 71:10, 72:8 eaten [1] - 50:2 ECF [2] - 7:22 Eckman [3] - 57:14, 58:11, 58:15 effect [6] - 15:19, 40:19, 56:14, 57:3, 60:20, 60:23 effectively [1] - 38:3 effects [1] - 55:7 effort [4] - 13:18, 54:23, 58:20, 82:5 efforts [9] - 12:24, 54:18, 57:9, 59:20, 61:8, 62:3, 62:4, 65:4 EFT [1] - 83:6 eighties [1] - 44:25 either [9] - 18:19, 32:11, 32:22, 41:25, 49:2, 56:11, 69:16, 87:1, 88:17 Either/or [1] - 57:2 electronically [3] - 23:9, 41:25, 45:4 element [1] - 21:24 eliminate [1] - 62:23 email [2] - 34:4, 39:13 emailed [1] - 45:2 emails [1] - 23:8		

82:24, 83:7, 84:15, 84:18, 86:17 ETFs [16] - 4:20, 4:24, 14:7, 15:18, 18:3, 18:8, 19:7, 24:17, 24:18, 24:21, 27:17, 62:15, 62:24, 65:5, 75:7 ethnic [1] - 57:22 event [5] - 7:1, 24:2, 25:10, 34:22, 50:1 events [1] - 63:23 eventually [1] - 5:21 evidenced [1] - 22:24 evidentiary [3] - 38:6, 46:21, 47:21 Ex [1] - 17:7 Ex-Judge [1] - 17:7 exactitude [2] - 71:1, 71:2 exactly [6] - 43:15, 63:18, 75:1, 81:9, 88:1 Exactly [2] - 27:3, 90:19 examination [2] - 47:21, 47:24 examined [1] - 50:15 example [6] - 18:7, 41:4, 41:18, 67:6, 73:9, 86:4 Examples [1] - 44:20 exceed [2] - 74:15, 80:9 exceeds [1] - 9:16 excellent [2] - 21:13, 21:18 except [1] - 43:16 exclusion [2] - 30:10, 30:14 exclusive [2] - 25:13, 76:14 excuse [4] - 16:14, 19:5, 27:5, 60:10 exercise [4] - 60:9, 61:5, 61:8, 87:11 exhausted [2] - 79:8, 79:9 Exhibit [1] - 34:5 exhibit [3] - 51:14, 51:16, 57:21 exhibits [1] - 28:1 existed [1] - 44:24 exists [1] - 87:3 expand [1] - 86:3 expect [2] - 29:19, 30:24 expecting [2] - 40:1, 70:21 expedited [3] - 13:20, 15:10, 15:14 expense [3] - 60:23, 83:10, 83:13 expenses [1] - 37:4	experience [7] - 26:20, 29:1, 29:6, 69:13, 71:4, 86:25 experienced [1] - 74:3 experiences [1] - 31:14 Explain [1] - 91:21 explained [3] - 33:8, 34:10, 59:15 explanation [2] - 55:15, 55:21 express [1] - 64:10 extent [4] - 8:14, 20:14, 40:25, 41:11 extraordinary [1] - 82:5 extrapolated [1] - 47:5 extremely [1] - 42:22	feature [1] - 49:11 federal [2] - 80:4, 80:22 Federal [3] - 4:22, 14:22, 50:2 Fedor [1] - 58:4 fee [26] - 4:24, 13:10, 13:16, 16:12, 17:22, 24:2, 46:13, 50:16, 50:20, 53:2, 66:19, 67:8, 67:18, 75:19, 76:5, 76:9, 76:13, 77:18, 78:17, 81:3, 81:19, 81:23, 81:24, 82:7, 84:10, 92:22 fees [40] - 4:19, 11:22, 25:9, 25:13, 33:5, 34:25, 37:4, 40:7, 45:21, 46:9, 46:19, 47:9, 47:12, 47:15, 47:17, 47:25, 48:6, 48:21, 48:22, 48:24, 49:2, 49:9, 50:13, 52:15, 53:8, 69:1, 69:9, 72:2, 75:25, 79:14, 79:23, 80:4, 80:9, 81:11, 87:10, 88:9, 88:24, 89:7, 91:6, 91:8 felt [2] - 22:2, 33:14 few [4] - 23:11, 56:1, 57:6, 78:4 fiduciary [1] - 76:3 fifty [1] - 18:5 fight [4] - 26:4, 54:23, 56:2, 59:12 fighting [1] - 88:9 figure [3] - 19:13, 88:11, 88:24 file [6] - 7:25, 8:3, 9:6, 65:25, 74:7, 88:17 filed [24] - 5:9, 6:25, 8:24, 14:18, 14:19, 14:20, 15:23, 23:17, 25:20, 25:24, 28:25, 47:13, 58:10, 58:18, 58:24, 71:20, 76:17, 76:19, 77:6, 80:8, 84:1, 84:16, 85:21, 87:8 filer [1] - 7:22 filing [3] - 12:9, 23:15, 87:4 filings [2] - 75:18 Final [1] - 90:17 final [25] - 5:20, 5:22, 11:11, 13:16, 14:2, 22:4, 25:17, 25:18, 26:2, 26:6, 26:10, 30:19, 36:6, 53:5, 71:6, 71:7, 71:9, 89:16, 89:17, 90:7, 90:9, 90:16, 90:17, 90:25, 92:13	finalization [1] - 60:22 finally [1] - 25:15 financial [1] - 56:2 fine [1] - 36:17 finger [1] - 67:12 finish [1] - 76:23 firm [7] - 25:22, 50:8, 50:9, 52:8, 53:7, 55:25, 76:18 Firm [1] - 7:2 firms [3] - 17:18, 17:20, 55:25 first [15] - 11:8, 12:16, 13:17, 14:18, 20:6, 29:4, 34:11, 38:4, 48:18, 49:7, 49:13, 59:12, 61:20, 76:3, 89:7 First [4] - 11:14, 38:20, 45:10, 54:5 five [3] - 18:6, 42:25, 43:1 fixed [1] - 27:17 flat [8] - 19:7, 19:9, 21:12, 24:17, 26:8, 27:15, 29:22 flesh [1] - 54:19 fleshed [1] - 69:10 flew [1] - 33:14 Florida [2] - 14:20, 15:3 fluid [1] - 44:17 fold [1] - 82:5 folks [1] - 54:9 follow [1] - 11:7 following [1] - 58:3 follows [1] - 11:8 form [3] - 9:2, 39:10, 64:12 formal [1] - 5:18 formally [1] - 46:16 former [2] - 22:10, 29:21 forms [1] - 39:12 forth [1] - 11:9 fortunate [1] - 76:9 forum [1] - 25:13 forward [4] - 44:21, 59:8, 61:7, 75:2 fought [2] - 18:1, 61:25 four [3] - 82:15, 85:14, 87:25 fraudulent [3] - 70:17, 70:19, 73:18 Freed [6] - 46:15, 46:16, 50:7, 50:12, 51:14, 52:6 frivolous [3] - 85:21, 88:2, 88:14 front [1] - 29:17 frustrated [1] - 33:8 full [2] - 16:23, 17:13 fully [2] - 69:10, 75:20	fund [20] - 36:22, 36:23, 37:2, 37:3, 37:5, 37:7, 38:1, 38:10, 39:16, 39:25, 42:7, 45:7, 46:5, 70:15, 80:16, 81:24, 85:1, 86:3, 86:5, 90:18 funded [1] - 90:20 funding [1] - 92:23 funds [1] - 48:16 futility [1] - 61:9
G				
games [1] - 51:1 Gary [1] - 57:9 general [1] - 81:23 generally [1] - 51:25 gentleman [1] - 26:17 gentlemanly [1] - 63:10 gentlemen [1] - 75:11 Girsh [3] - 12:17, 14:1, 20:5 Giuseppi [1] - 6:12 given [16] - 9:21, 10:9, 12:13, 22:4, 31:2, 44:22, 45:3, 47:10, 49:2, 50:20, 50:21, 53:3, 58:22, 76:2, 92:7 Gordon [1] - 45:8 Government [1] - 50:3 grab [1] - 27:5 grandmother [1] - 36:18 grant [2] - 6:14, 6:21 granted [6] - 5:16, 5:17, 15:5, 26:3, 62:6, 76:9 Granted [1] - 54:21 great [5] - 24:12, 60:23, 64:1, 83:10, 83:13 greater [5] - 19:1, 20:20, 23:1, 23:2, 41:18 gripe [1] - 34:7 group [1] - 63:18 groups [1] - 10:25 guess [7] - 22:15, 29:20, 34:7, 48:18, 66:25, 69:1, 70:24 guesstimating [1] - 83:4 guidelines [1] - 39:10 gun [1] - 59:23 guys [1] - 88:11				

<p>H</p> <p>H.P [3] - 4:7, 4:11, 53:24</p> <p>hac [8] - 4:4, 6:11, 6:22, 6:25, 7:5, 7:8, 8:6, 8:17</p> <p>half [3] - 18:15, 24:15</p> <p>Hall [2] - 5:4, 14:8</p> <p>hand [3] - 9:5, 27:20, 87:23</p> <p>handed [1] - 9:8</p> <p>handing [1] - 70:22</p> <p>handle [2] - 74:4, 85:10</p> <p>hard [2] - 17:25, 61:25</p> <p>harm [2] - 48:21, 50:3</p> <p>harmed [1] - 49:25</p> <p>Harter [4] - 10:2, 10:11, 10:12, 12:9</p> <p>Hatch [2] - 50:9, 51:14</p> <p>hazy [1] - 40:21</p> <p>hear [13] - 6:8, 11:13, 11:15, 11:20, 11:22, 11:25, 12:16, 12:18, 25:8, 53:18, 66:24, 69:4, 83:24</p> <p>heard [8] - 6:7, 9:21, 10:5, 10:10, 24:19, 26:1, 79:21, 83:20</p> <p>hearing [18] - 4:21, 5:21, 5:22, 6:9, 6:14, 6:23, 7:6, 11:16, 15:20, 16:10, 20:1, 34:11, 38:7, 46:21, 47:22, 48:8, 82:15, 89:1</p> <p>hearings [1] - 14:24</p> <p>held [1] - 80:21</p> <p>help [5] - 29:16, 46:7, 46:8, 59:4, 60:5</p> <p>herculean [1] - 57:9</p> <p>hide [1] - 63:19</p> <p>high [1] - 42:22</p> <p>higher [3] - 22:22, 71:11, 71:13</p> <p>highlight [2] - 22:2, 48:12</p> <p>highlights [1] - 48:2</p> <p>himself [2] - 28:2, 28:4</p> <p>historical [1] - 80:7</p> <p>histories [1] - 14:16</p> <p>history [1] - 20:18</p> <p>hit [1] - 21:25</p> <p>holding [2] - 16:19, 27:20</p> <p>honest [1] - 30:11</p> <p>Honestly [1] - 70:8</p> <p>Honor [137] - 6:20, 7:16, 7:18, 7:21, 8:19, 9:3, 10:6, 10:17, 12:4, 12:6,</p>	<p>12:20, 13:16, 13:23, 14:1, 14:4, 14:9, 14:17, 16:7, 16:22, 17:4, 17:9, 18:17, 19:14, 19:24, 20:5, 20:13, 20:24, 21:19, 21:21, 21:23, 21:25, 22:7, 22:8, 22:9, 22:14, 23:11, 23:18, 23:19, 24:19, 25:8, 25:12, 25:15, 25:16, 25:17, 26:5, 26:6, 26:15, 26:16, 26:25, 27:3, 27:5, 27:16, 27:18, 28:22, 29:4, 29:11, 29:23, 30:4, 30:6, 30:22, 31:11, 31:19, 31:22, 32:3, 32:6, 33:1, 33:3, 34:16, 35:8, 35:10, 35:18, 35:21, 36:20, 38:1, 51:7, 60:10, 61:23, 61:24, 62:6, 62:21, 63:6, 63:21, 65:7, 66:22, 67:2, 68:1, 68:3, 68:4, 68:12, 68:15, 68:20, 69:6, 69:12, 69:18, 70:5, 70:8, 70:12, 70:13, 70:24, 71:5, 74:12, 74:18, 74:24, 75:20, 76:3, 76:6, 76:10, 76:16, 76:22, 76:24, 77:2, 77:19, 78:4, 78:10, 79:6, 79:10, 79:24, 81:7, 82:8, 84:1, 84:19, 84:22, 86:1, 87:15, 87:24, 89:12, 89:15, 89:21, 90:12, 90:19, 90:24, 91:5, 91:19, 92:11, 92:19</p> <p>Honor's [4] - 75:24, 76:14, 78:2, 88:1</p> <p>hope [5] - 29:12, 31:1, 31:6, 61:4, 61:7</p> <p>hopefully [1] - 13:19</p> <p>host [1] - 80:25</p> <p>hotel [1] - 37:24</p> <p>hours [1] - 33:18</p> <p>house [1] - 72:10</p> <p>huge [1] - 47:10</p> <p>Hugh [1] - 11:4</p> <p>Hum [1] - 65:13</p> <p>hundred [7] - 9:13, 18:5, 18:6, 42:17, 42:23, 67:22, 67:24</p> <p>hundred-and-seventy-five [1] - 18:6</p> <p>hundred-fifty [1] - 18:5</p> <p>hundred-thousand [1] - 42:23</p>	<p>hurdle [1] - 24:4</p> <p>hurry [1] - 35:12</p> <p>I</p> <p>i.e [1] - 81:13</p> <p>idea [1] - 74:6</p> <p>identify [2] - 22:18, 67:10</p> <p>identifying [1] - 22:10</p> <p>ignore [2] - 35:1, 35:5</p> <p>ignored [2] - 33:9, 33:15</p> <p>illegal [12] - 20:15, 50:15, 54:13, 62:12, 62:13, 62:16, 66:4, 66:10, 66:11, 76:5, 76:13, 78:8</p> <p>illegality [1] - 66:15</p> <p>Illinois [13] - 7:2, 7:23, 8:10, 8:14, 14:15, 16:14, 16:17, 16:18, 45:8, 45:10, 77:9, 77:21, 87:21</p> <p>Illionois [1] - 77:15</p> <p>imagine [3] - 71:10, 81:7, 90:10</p> <p>immediately [1] - 50:2</p> <p>impact [1] - 60:4</p> <p>implemented [1] - 21:12</p> <p>implementing [1] - 21:9</p> <p>implying [1] - 83:9</p> <p>importance [1] - 47:24</p> <p>important [10] - 37:10, 37:25, 38:9, 40:10, 47:21, 48:1, 48:19, 63:25, 74:7, 90:1</p> <p>importantly [1] - 76:15</p> <p>impression [1] - 83:9</p> <p>improper [2] - 51:17, 63:15</p> <p>improperly [1] - 29:8</p> <p>impropriety [1] - 63:12</p> <p>inappropriate [1] - 39:22</p> <p>inasmuch [1] - 9:12</p> <p>inception [1] - 54:24</p> <p>incidentally [1] - 57:11</p> <p>inclined [1] - 6:13</p> <p>include [3] - 13:11, 56:18, 59:16</p> <p>included [5] - 13:11, 19:20, 29:16, 30:5, 41:10</p> <p>includes [5] - 14:13, 29:21, 30:3, 30:17, 30:19</p>	<p>including [7] - 5:11, 12:1, 16:3, 16:8, 16:15, 47:21, 60:7</p> <p>inclusion [1] - 61:5</p> <p>inconsistent [1] - 43:13</p> <p>increase [1] - 39:21</p> <p>increasing [1] - 72:4</p> <p>incredible [1] - 21:15</p> <p>Independent [1] - 31:5</p> <p>indicate [1] - 30:18</p> <p>indicated [3] - 6:7, 20:11, 49:10</p> <p>indicates [1] - 17:7</p> <p>indication [1] - 31:2</p> <p>individual [6] - 6:3, 19:19, 25:2, 54:24, 56:11, 57:10</p> <p>individually [1] - 68:11</p> <p>individuals [2] - 56:1, 82:19</p> <p>indulgence [1] - 54:10</p> <p>information [9] - 12:14, 39:8, 57:16, 57:19, 58:12, 59:4, 60:15, 83:3, 83:5</p> <p>informed [1] - 58:11</p> <p>initial [1] - 20:7</p> <p>injunction [8] - 19:6, 19:11, 25:19, 25:25, 26:4, 26:11, 29:13, 30:23</p> <p>injured [1] - 44:21</p> <p>insert [1] - 23:3</p> <p>inserts [1] - 23:7</p> <p>insidious [1] - 60:4</p> <p>insolvency [1] - 50:6</p> <p>instance [1] - 76:3</p> <p>instances [1] - 22:2</p> <p>instead [1] - 70:6</p> <p>insurance [2] - 39:20, 50:4</p> <p>insure [1] - 8:9</p> <p>insurmountable [2] - 74:1, 74:2</p> <p>integrity [1] - 61:3</p> <p>intend [1] - 30:16</p> <p>intends [1] - 77:5</p> <p>intent [2] - 8:1, 58:19</p> <p>intercede [1] - 59:21</p> <p>interchangeable [2] - 28:11, 28:17</p> <p>interest [2] - 54:17, 89:2</p> <p>interesting [1] - 53:20</p> <p>interestingly [2] - 40:5, 46:18</p> <p>internet [3] - 27:22, 45:2, 45:4</p> <p>interrupting [1] - 68:15</p> <p>introductory [1] -</p>	<p>12:22</p> <p>invalidate [1] - 37:19</p> <p>invalidated [1] - 24:2</p> <p>invested [2] - 74:8, 81:18</p> <p>investigate [1] - 73:20</p> <p>investigation [1] - 71:19</p> <p>investment [2] - 81:18, 81:20</p> <p>invoice [1] - 19:20</p> <p>involved [8] - 16:12, 17:20, 58:21, 61:1, 77:10, 79:17, 81:6</p> <p>involves [2] - 4:18, 14:8</p> <p>involving [2] - 9:13, 40:19</p> <p>iPhone [1] - 28:5</p> <p>irony [1] - 55:4</p> <p>issue [46] - 8:13, 16:17, 21:2, 21:3, 21:6, 26:16, 27:9, 28:22, 31:15, 34:5, 43:16, 43:23, 46:17, 47:12, 49:1, 50:5, 55:16, 56:2, 59:11, 68:3, 68:17, 70:14, 72:20, 73:19, 74:21, 75:5, 75:13, 75:14, 75:19, 76:21, 79:10, 79:14, 79:16, 79:22, 79:23, 81:16, 84:22, 84:24, 86:19, 88:5, 88:8, 89:1, 91:18, 92:9</p> <p>issued [1] - 15:21</p> <p>issues [19] - 17:23, 20:9, 20:13, 25:13, 26:4, 37:16, 46:21, 56:7, 69:9, 71:6, 74:2, 75:19, 78:6, 87:2, 89:8, 91:14, 91:15, 92:15, 92:18</p> <p>item [1] - 56:24</p> <p>items [1] - 23:11</p> <p>J</p> <p>Jeff [1] - 10:15</p> <p>Jen [1] - 28:12</p> <p>Jersey [4] - 8:4, 16:23, 17:6, 87:20</p> <p>job [1] - 21:16</p> <p>joined [5] - 13:13, 25:23, 26:13, 29:8, 54:25</p> <p>joint [2] - 52:19, 52:22</p> <p>Joni [1] - 10:12</p> <p>Joseph [4] - 4:1, 6:12, 32:4</p> <p>judge [2] - 58:15, 91:13</p>
---	---	--	---	---

<p>Judge [23] - 6:16, 7:7, 14:11, 14:14, 15:6, 15:8, 15:20, 16:6, 16:22, 17:3, 17:5, 17:7, 17:11, 21:15, 23:13, 72:11, 72:14, 76:11, 78:3, 87:23, 88:20, 90:2, 92:21</p> <p>Judging [1] - 55:24</p> <p>judgment [6] - 15:19, 84:2, 86:8, 90:10, 91:1, 92:14</p> <p>July [3] - 35:10, 35:15, 35:17</p> <p>jumping [1] - 71:24</p> <p>June [3] - 47:15, 58:5, 58:15</p> <p>jurisdiction [16] - 9:11, 9:16, 15:5, 18:6, 76:14, 78:2, 84:13, 84:19, 85:4, 85:15, 86:18, 87:3, 87:9, 87:17, 87:19, 88:1</p> <p>jurisprudence [1] - 39:23</p> <p>jury [1] - 20:19</p> <p>justice [2] - 60:17, 60:19</p> <p>justifications [1] - 43:12</p>	<p>87:19</p> <p>Lamb [1] - 57:9</p> <p>Langone [14] - 7:4, 8:20, 36:1, 36:2, 46:11, 76:17, 76:20, 76:23, 77:4, 77:8, 79:15, 83:21, 85:7, 86:9</p> <p>LANGONE [1] - 36:1</p> <p>Langone's [2] - 38:8, 75:18</p> <p>language [1] - 40:17</p> <p>laptop [2] - 27:21, 27:22</p> <p>large [5] - 24:23, 44:19, 70:17, 80:16, 90:20</p> <p>largely [1] - 68:25</p> <p>largest [1] - 18:16</p> <p>last [6] - 8:1, 8:4, 37:24, 46:12, 67:21, 90:24</p> <p>Lastly [1] - 26:16</p> <p>late [7] - 7:19, 41:13, 46:13, 78:18, 78:20, 79:21, 91:20</p> <p>latter [1] - 19:10</p> <p>lauds [1] - 62:3</p> <p>Laughter [4] - 35:14, 35:24, 68:23, 89:25</p> <p>Lavery [13] - 7:1, 7:2, 7:5, 7:11, 7:17, 7:19, 36:11, 36:12, 36:14, 36:19, 69:21, 76:12, 83:17</p> <p>LAVERY [54] - 7:18, 7:21, 8:19, 35:21, 35:25, 36:6, 36:9, 36:11, 36:13, 36:15, 36:17, 36:20, 38:20, 38:23, 40:15, 40:21, 41:11, 41:24, 44:2, 44:6, 44:8, 44:10, 44:14, 44:16, 45:12, 45:18, 45:20, 45:25, 46:2, 48:18, 51:4, 51:7, 51:13, 51:20, 52:11, 52:17, 53:12, 83:18, 83:21, 83:25, 84:5, 84:8, 84:10, 84:15, 85:6, 85:9, 85:12, 85:24, 86:1, 86:12, 86:17, 86:23, 87:15, 88:19</p> <p>Lavery's [4] - 68:1, 68:25, 69:5, 75:16</p> <p>law [11] - 6:7, 9:5, 42:18, 43:23, 47:13, 49:3, 49:4, 49:5, 58:4, 79:24, 80:1</p> <p>Law [1] - 7:2</p> <p>laws [1] - 4:23</p> <p>lawsuit [16] - 5:9, 27:4, 28:25, 76:17,</p>	<p>76:19, 76:24, 77:5, 78:1, 83:19, 85:14, 86:14, 86:22, 87:9, 87:24, 88:3, 88:5</p> <p>lawsuits [1] - 88:8</p> <p>lawyer [4] - 6:17, 39:6, 63:20, 76:21</p> <p>lawyers [8] - 13:4, 13:7, 13:11, 17:23, 49:13, 76:7, 76:18, 77:21</p> <p>layers [1] - 53:17</p> <p>lead [2] - 53:6, 84:2</p> <p>leading [1] - 75:25</p> <p>leaking [2] - 67:25, 68:25</p> <p>learned [2] - 7:23, 70:1</p> <p>learning [1] - 25:5</p> <p>least [2] - 9:13, 37:24</p> <p>leave [2] - 67:16, 83:14</p> <p>leeway [1] - 52:15</p> <p>left [5] - 18:19, 72:2, 78:12, 78:18</p> <p>legal [3] - 52:13, 55:24, 88:13</p> <p>legality [2] - 55:4, 59:12</p> <p>legitimacy [1] - 59:3</p> <p>length [1] - 17:16</p> <p>less [5] - 23:24, 42:17, 43:9, 59:23, 72:1</p> <p>letter [4] - 38:8, 47:15, 52:2, 58:15</p> <p>letters [3] - 9:22, 79:16, 79:18</p> <p>level [1] - 30:12</p> <p>liability [1] - 37:19</p> <p>lifted [1] - 15:6</p> <p>light [4] - 37:12, 37:14, 37:15, 80:7</p> <p>likelihood [1] - 11:19</p> <p>likely [1] - 44:21</p> <p>limited [1] - 29:6</p> <p>line [1] - 34:3</p> <p>liquidated [2] - 13:9, 20:14</p> <p>list [1] - 70:3</p> <p>listed [1] - 17:22</p> <p>litany [1] - 60:13</p> <p>litigant [2] - 61:13, 83:24</p> <p>litigants [1] - 61:15</p> <p>litigated [2] - 46:9, 46:13</p> <p>litigating [2] - 21:14, 33:16</p> <p>litigation [20] - 14:5, 14:16, 16:8, 16:15, 16:21, 17:20, 17:24, 20:8, 35:2, 40:22, 40:25, 46:13, 50:11, 50:13, 51:14, 51:16,</p>	<p>51:20, 53:9, 85:16, 88:13</p> <p>Litigation [1] - 40:23</p> <p>live [1] - 53:25</p> <p>lives [1] - 60:5</p> <p>loans [1] - 60:4</p> <p>lodestar [2] - 12:2, 33:18</p> <p>logistically [1] - 8:2</p> <p>Look [2] - 45:14, 85:8</p> <p>look [13] - 26:6, 40:17, 46:24, 48:4, 48:5, 48:13, 59:8, 61:7, 71:12, 79:20, 80:15, 88:23, 90:13</p> <p>looked [1] - 68:11</p> <p>looking [3] - 56:9, 56:10, 80:8</p> <p>looks [1] - 70:19</p> <p>Los [5] - 4:2, 15:1, 15:4, 32:5, 32:8</p> <p>lose [1] - 62:1</p> <p>loss [1] - 39:2</p> <p>lost [1] - 62:2</p> <p>lottery [2] - 70:20, 73:4</p> <p>low [3] - 54:15, 60:1, 60:3</p> <p>lower [3] - 24:3, 24:4, 78:22</p>	<p>maximum [1] - 39:2</p> <p>mean [12] - 11:24, 39:2, 48:10, 49:21, 51:4, 68:15, 70:10, 71:22, 71:23, 73:8, 81:4, 86:7</p> <p>means [1] - 92:16</p> <p>meant [1] - 40:14</p> <p>measure [1] - 74:9</p> <p>mechanism [2] - 44:17, 79:2</p> <p>mediate [1] - 17:11</p> <p>mediation [4] - 5:14, 16:23, 17:13, 23:12</p> <p>meets [1] - 12:17</p> <p>Mehaffie [1] - 10:12</p> <p>member [8] - 8:9, 8:15, 32:11, 32:14, 36:2, 60:21, 73:23, 74:8</p> <p>members [13] - 9:13, 9:14, 20:16, 38:2, 38:21, 41:6, 46:8, 47:6, 48:17, 49:17, 72:22, 73:23, 80:10</p> <p>memorandum [2] - 47:13, 58:4</p> <p>memory [1] - 40:20</p> <p>mention [1] - 11:24</p> <p>mentioned [1] - 24:8</p> <p>merits [1] - 59:2</p> <p>Mich [2] - 44:10, 44:11</p> <p>might [4] - 29:16, 81:7, 83:9, 89:16</p> <p>Mike [2] - 9:7, 10:25</p> <p>million [33] - 9:16, 15:15, 18:13, 18:15, 18:16, 18:18, 18:20, 18:23, 18:24, 19:3, 19:4, 19:5, 19:19, 37:11, 39:25, 42:12, 46:4, 47:3, 47:6, 47:7, 47:9, 48:21, 49:16, 49:19, 50:2, 71:25, 81:3, 86:6, 90:6, 90:20, 91:12</p> <p>millions [2] - 39:3, 54:25</p> <p>Milliron [1] - 22:7</p> <p>mine [1] - 12:25</p> <p>minimal [1] - 73:6</p> <p>minor [1] - 23:11</p> <p>minuscule [1] - 83:7</p> <p>minute [1] - 26:21</p> <p>minutes [4] - 7:8, 18:24, 48:11, 86:22</p> <p>mirrors [1] - 82:21</p> <p>missed [1] - 68:17</p> <p>mobile [1] - 4:25</p> <p>Mobile [18] - 13:1, 18:14, 22:5, 22:6, 22:17, 22:18, 22:23, 23:4, 25:4, 25:6,</p>
K			M	
<p>Kentucky [1] - 15:1</p> <p>kept [1] - 70:13</p> <p>kicks [1] - 92:6</p> <p>kind [7] - 28:2, 33:8, 39:4, 39:18, 40:9, 47:25, 85:19</p> <p>kinds [5] - 28:7, 37:22, 49:22, 64:11, 69:13</p> <p>Kinkel [9] - 14:14, 16:14, 16:20, 50:11, 51:22, 51:23, 52:3, 81:14, 84:6</p> <p>knowledge [1] - 15:10</p> <p>known [2] - 51:15, 79:17</p> <p>knows [7] - 18:18, 46:15, 55:2, 79:25, 83:5, 87:4, 87:9</p>			<p>Madison [2] - 52:9, 77:9</p> <p>magic [2] - 70:3, 92:16</p> <p>magnify [2] - 71:20, 72:3</p> <p>mail [1] - 47:14</p> <p>main [1] - 33:13</p> <p>maintained [1] - 90:8</p> <p>major [4] - 15:17, 29:3, 55:10, 55:16</p> <p>majority [3] - 13:7, 67:17, 83:5</p> <p>malpractice [1] - 77:1</p> <p>manageability [1] - 44:18</p> <p>March [3] - 5:12, 15:24, 47:16</p> <p>Mark [2] - 7:1, 36:11</p> <p>markets [2] - 18:10, 24:15</p> <p>mathematical [1] - 71:23</p> <p>matter [17] - 4:18, 5:8, 5:21, 6:12, 9:10, 9:11, 9:18, 9:22, 10:9, 15:12, 34:20, 54:19, 54:22, 58:2, 81:7, 87:5, 88:22</p> <p>maximize [1] - 38:1</p>	
L				
<p>L-a-v-e-r-y [1] - 36:11</p> <p>lack [1] - 77:17</p> <p>laid [1] - 24:25</p> <p>Lakin [12] - 47:22, 50:7, 51:21, 52:5, 52:7, 52:9, 77:14, 84:15, 84:17, 85:2,</p>				

29:2, 31:14, 40:2, 62:22, 63:7, 71:13, 75:9	44:8, 44:10, 44:14, 44:16, 45:12, 45:18, 45:20, 45:25, 46:2, 48:18, 51:4, 51:7, 51:13, 51:20, 52:11, 52:17, 53:12, 53:20, 53:23, 54:2, 54:12, 55:20, 55:21, 56:9, 56:19, 56:22, 57:2, 61:18, 61:23, 62:6, 62:21, 63:6, 64:17, 64:20, 64:22, 65:1, 65:7, 65:13, 65:21, 65:24, 66:6, 66:13, 66:22, 67:2, 67:5, 68:12, 68:14, 68:20, 68:24, 69:5, 71:3, 71:18, 72:7, 72:14, 72:17, 72:20, 73:11, 73:15, 73:21, 74:1, 74:17, 74:22, 78:4, 78:16, 80:12, 82:10, 82:13, 82:16, 82:21, 82:23, 83:3, 83:18, 83:21, 83:25, 84:5, 84:8, 84:10, 84:15, 85:6, 85:9, 85:12, 85:24, 86:1, 86:12, 86:17, 86:23, 87:15, 87:23, 88:19, 88:20, 89:12, 89:15, 89:21, 90:1, 90:4, 90:15, 90:19, 90:23, 91:4, 91:10, 91:17, 91:19, 91:22, 92:1, 92:8, 92:11, 92:19, 92:21, 92:25	81:6	75:7	9:14, 9:20, 17:5, 17:14, 17:19, 20:6, 20:11, 20:12, 22:19, 25:20, 28:2, 32:10, 35:12, 37:2, 46:6, 48:22, 54:19, 59:11, 59:23, 68:18, 72:9, 73:22, 74:16, 75:3, 76:7, 78:6, 79:3, 79:16, 79:18, 80:20, 82:25, 86:6, 89:8, 89:9, 89:12
Mobile's [1] - 18:7		negotiated [4] - 36:24, 59:17, 59:22, 75:6	numbers [4] - 28:8, 47:5, 70:16, 70:21	
Mobility [6] - 4:21, 13:8, 21:22, 27:15, 31:12, 54:3		negotiation [1] - 18:1	numerous [3] - 17:1, 17:15, 76:1	
Mobility's [1] - 90:5		negotiations [5] - 5:14, 16:25, 17:1, 17:15, 58:21		
moment [1] - 58:24		Neilson [1] - 37:15	O	
momentarily [1] - 4:6		network [2] - 27:23	o'clock [1] - 82:15	
monetary [2] - 25:2, 25:3		never [6] - 33:12, 34:3, 49:23, 64:8, 64:21, 84:17	oath [1] - 38:6	
money [26] - 43:15, 45:16, 46:6, 56:25, 57:3, 63:1, 66:9, 67:16, 69:15, 69:22, 70:6, 70:8, 71:21, 72:9, 72:19, 73:25, 78:14, 79:1, 81:1, 84:6, 91:7, 91:8, 91:16, 92:7, 92:9		nevertheless [2] - 41:2, 52:2	object [2] - 36:21, 69:7	
months [1] - 38:17		New [6] - 8:4, 16:22, 17:6, 41:18, 42:18, 87:20	objected [4] - 32:25, 47:17, 57:10, 80:13	
moot [2] - 86:6, 86:8		new [1] - 37:13	objecting [1] - 47:15	
mooted [1] - 25:25		news [1] - 73:4	objection [18] - 4:12, 6:15, 6:18, 6:20, 7:11, 7:16, 37:12, 38:8, 47:17, 57:17, 58:5, 58:12, 58:18, 58:24, 59:3, 60:19, 61:21, 69:8	
morning [3] - 34:1, 34:10, 35:21		next [5] - 34:20, 45:20, 50:4, 52:18, 78:1	objections [6] - 7:5, 9:17, 11:18, 20:3, 38:5, 61:24	
Most [2] - 39:3, 67:18		nice [2] - 8:13, 53:21	objector [4] - 7:3, 8:12, 9:20, 33:1	
most [6] - 38:9, 48:19, 53:7, 54:19, 59:24, 75:17		Ninth [1] - 16:1	objectors [19] - 6:3, 6:4, 9:18, 9:25, 10:1, 10:2, 10:12, 10:14, 10:23, 11:1, 11:3, 11:5, 11:13, 11:14, 12:9, 53:15, 69:20, 80:13	
motion [10] - 5:11, 6:24, 8:3, 15:7, 16:16, 23:17, 25:25, 85:16, 88:14		nobody [1] - 43:18	obligate [1] - 65:3	
motions [3] - 15:25, 25:18, 88:17		non [1] - 25:3	obligation [3] - 62:23, 90:16, 92:23	
motivating [1] - 77:8		None [3] - 24:20, 75:21, 75:22	obligations [1] - 90:5	
motivation [1] - 59:4		normally [1] - 8:5	obtain [2] - 54:14, 54:18	
Mottek [1] - 13:13		Northeast [2] - 45:9, 45:11	Obviously [1] - 78:25	
move [1] - 89:3		Northern [1] - 7:23	obviously [6] - 8:2, 11:24, 45:1, 85:18, 88:22, 91:24	
moving [1] - 89:2		Northwest [1] - 44:14	occasion [1] - 17:14	
MR [179] - 4:7, 4:11, 6:16, 6:20, 7:7, 7:16, 7:18, 7:21, 8:19, 9:3, 10:6, 10:17, 10:19, 12:4, 12:6, 12:20, 14:4, 14:20, 17:4, 17:9, 17:13, 19:5, 19:23, 21:11, 21:21, 26:19, 26:25, 27:3, 27:10, 27:12, 28:24, 29:23, 30:1, 30:4, 30:9, 30:22, 31:1, 31:10, 31:17, 31:19, 31:22, 32:3, 32:9, 32:13, 32:16, 32:19, 32:24, 33:3, 34:16, 35:8, 35:15, 35:16, 35:18, 35:21, 35:25, 36:6, 36:9, 36:11, 36:13, 36:15, 36:17, 36:20, 38:20, 38:23, 40:15, 40:21, 41:11, 41:24, 44:2, 44:6,		note [4] - 6:17, 25:11, 30:8, 75:19	occasions [1] - 17:14	
		noted [4] - 20:25, 58:15, 61:24, 68:1	occur [1] - 87:16	
		nothing [12] - 20:23, 26:2, 56:13, 60:2, 67:20, 67:22, 74:11, 77:11, 77:16, 86:15, 86:21, 92:22	occurred [1] - 20:9	
		notice [22] - 5:18, 6:24, 8:1, 19:14, 19:17, 19:18, 20:2, 21:23, 22:2, 22:11, 22:19, 22:24, 23:4, 23:10, 30:7, 32:25, 33:11, 44:22, 45:2, 45:3, 65:17, 77:1	odd [1] - 49:11	
		notices [3] - 19:19, 19:25, 20:2	odds [1] - 50:9	
		notified [2] - 57:8, 57:12	offer [1] - 69:13	
		notify [2] - 56:12, 57:1	offered [1] - 25:6	
		notwithstanding [2] - 9:23, 20:25	offers [2] - 62:24, 62:25	
		November [2] - 5:8, 5:16	office [2] - 7:22, 27:24	
		number [11] - 6:3, 9:17, 24:15, 24:23, 28:15, 58:9, 70:7, 70:16, 71:24, 72:2,	officials [1] - 15:17	
			Olson [3] - 10:23, 11:3	
			once [3] - 26:2, 28:18, 42:4	
			One [4] - 6:12, 20:25, 41:6, 77:7	
			one [37] - 4:8, 8:8,	

<p>owe ^[1] - 66:9 owed ^[2] - 62:11, 63:4 owing ^[1] - 67:16 own ^[5] - 56:3, 58:6, 65:25, 75:10, 75:11</p>	<p>78:13, 81:2, 85:2, 92:6, 92:7 paying ^[3] - 54:22, 78:17, 87:10 payment ^[7] - 66:16, 90:5, 90:7, 90:16, 90:17, 92:10, 92:14 payors ^[2] - 78:18, 78:20 penalties ^[1] - 78:8 penalty ^[2] - 20:15, 46:9 pendency ^[1] - 14:23 pending ^[5] - 13:2, 14:11, 35:2, 37:17, 87:5 people ^[40] - 22:19, 23:7, 27:20, 30:2, 41:25, 42:6, 42:11, 42:15, 43:1, 43:5, 45:1, 45:4, 47:1, 49:20, 56:6, 56:18, 57:23, 58:9, 60:4, 60:25, 62:7, 62:19, 62:24, 62:25, 63:18, 67:10, 67:17, 67:18, 71:20, 73:1, 73:24, 78:9, 78:11, 78:16, 79:2, 79:3, 80:17, 81:12, 82:24, 83:11 people's ^[2] - 72:3, 81:12 per ^[1] - 17:14 percent ^[1] - 63:25 percentage ^[2] - 48:15, 86:5 perfect ^[1] - 35:9 performed ^[2] - 76:7, 76:8 perhaps ^[1] - 89:17 period ^[7] - 5:1, 18:11, 24:12, 42:5, 59:17, 71:6, 71:7 permission ^[2] - 12:21, 13:25 person ^[6] - 44:20, 65:6, 65:8, 65:16, 82:25, 87:8 personal ^[3] - 56:3, 56:6, 58:6 personally ^[3] - 21:14, 46:15, 50:24 persons ^[1] - 44:22 perspective ^[1] - 72:20 pertains ^[1] - 87:4 petition ^[1] - 59:21 Phil ^[6] - 46:15, 47:22, 50:8, 50:11, 52:2, 52:7 Phone ^[1] - 40:23 phone ^[7] - 4:25, 13:12, 23:14, 27:2, 28:15, 59:21</p>	<p>phones ^[1] - 28:5 physically ^[1] - 8:3 pick ^[3] - 22:1, 23:19, 53:7 piece ^[1] - 92:16 pitfalls ^[1] - 17:24 places ^[1] - 13:3 plaintiff ^[1] - 5:4 Plaintiffs ^[1] - 32:8 plaintiffs ^[8] - 4:2, 4:19, 15:1, 16:3, 32:4, 34:8, 78:24, 79:6 plaintiffs' ^[4] - 33:9, 38:11, 45:25, 46:2 plan ^[8] - 5:2, 22:24, 37:7, 38:14, 41:21, 47:11, 72:21, 72:24 planned ^[1] - 26:13 plans ^[1] - 35:11 Plato's ^[1] - 22:12 play ^[1] - 92:6 pleased ^[1] - 85:18 plenty ^[1] - 74:17 plugging ^[1] - 27:24 Plutzik ^[1] - 13:13 point ^[25] - 11:13, 19:24, 24:6, 24:7, 29:2, 30:24, 38:4, 41:20, 43:4, 43:7, 43:19, 44:16, 45:20, 52:18, 58:8, 62:18, 64:8, 64:24, 68:1, 69:6, 71:14, 77:7, 79:7, 79:8, 84:20 pointed ^[1] - 63:16 points ^[5] - 21:25, 25:16, 52:17, 74:24, 78:4 policies ^[3] - 21:8, 21:11, 24:13 policy ^[8] - 15:11, 15:18, 18:3, 43:12, 72:25, 73:12, 73:16, 73:17 pop ^[1] - 28:14 portion ^[3] - 23:3, 24:12, 90:20 position ^[13] - 33:3, 42:12, 46:23, 56:2, 59:5, 60:14, 63:23, 67:1, 70:25, 73:24, 81:10, 81:13, 88:12 possibility ^[1] - 89:20 possible ^[2] - 79:1, 87:21 potential ^[7] - 40:6, 40:18, 70:14, 73:4, 73:18, 73:22, 81:21 potentially ^[2] - 71:11, 80:6 pound ^[1] - 54:19 practice ^[4] - 5:11, 81:22, 85:16, 88:14</p>	<p>practices ^[1] - 52:9 pragmatic ^[1] - 50:1 prayer ^[1] - 87:25 preceded ^[3] - 24:20, 25:5, 25:19 precedents ^[1] - 13:23 precisely ^[1] - 63:14 preempted ^[2] - 15:22, 64:12 preemption ^[2] - 15:7, 15:12 preferably ^[1] - 76:2 prejudice ^[3] - 15:8, 57:21, 57:23 preliminaries ^[1] - 4:16 preliminary ^[7] - 5:15, 5:17, 8:7, 23:18, 25:11, 48:7, 49:1 premise ^[1] - 27:4 pres ^[20] - 18:20, 38:10, 39:22, 43:2, 43:9, 43:12, 43:13, 43:18, 44:17, 45:5, 45:15, 47:10, 69:8, 69:12, 69:14, 69:17, 70:6, 70:13, 73:9, 86:4 present ^[2] - 55:11, 63:19 presentation ^[3] - 7:12, 68:25, 69:6 presented ^[1] - 79:13 presently ^[1] - 87:5 presents ^[2] - 40:6, 80:25 preserves ^[1] - 62:9 presumably ^[1] - 86:12 prevail ^[1] - 66:17 prevailed ^[1] - 66:19 prevent ^[1] - 8:17 previous ^[1] - 26:11 previously ^[4] - 7:3, 13:4, 22:4, 47:16 price ^[1] - 86:15 primarily ^[1] - 36:21 primary ^[1] - 15:5 principle ^[3] - 17:18, 54:23, 58:2 principles ^[1] - 75:22 privilege ^[1] - 82:17 pro ^[33] - 4:4, 6:11, 6:22, 6:25, 7:3, 7:5, 7:8, 8:6, 8:17, 9:19, 9:20, 19:9, 21:12, 31:16, 31:18, 31:19, 39:16, 41:6, 41:22, 41:23, 42:5, 42:6, 42:13, 42:24, 43:6, 43:11, 45:16, 61:13, 61:15, 72:4, 73:10, 74:15</p>	<p>problem ^[8] - 8:5, 12:3, 12:5, 49:7, 54:11, 80:2, 81:21, 85:22 problems ^[6] - 8:16, 44:18, 44:20, 44:24, 56:5, 80:25 procedural ^[1] - 44:18 procedure ^[1] - 11:7 procedures ^[4] - 7:24, 15:11, 15:18, 18:3 proceed ^[2] - 12:15, 20:23 proceeding ^[2] - 9:19, 16:6 proceedings ^[4] - 14:22, 14:23, 16:11, 20:10 process ^[6] - 13:20, 15:14, 17:21, 40:3, 71:14, 74:8 processing ^[1] - 30:15 produced ^[1] - 15:15 Professional ^[1] - 49:6 professional ^[1] - 77:24 program ^[8] - 19:14, 19:17, 20:3, 21:24, 22:3, 22:20, 23:4, 70:5 programs ^[1] - 19:18 prohibited ^[2] - 50:16, 53:4 prohibits ^[2] - 50:16, 52:24 promise ^[2] - 49:24, 64:11 promised ^[1] - 33:24 promote ^[1] - 42:20 promotes ^[1] - 42:23 pronounces ^[1] - 36:18 proof ^[2] - 39:1, 39:6 proper ^[1] - 31:3 property ^[1] - 49:8 proportion ^[2] - 50:18, 50:22 proposal ^[1] - 34:22 propose ^[1] - 60:18 proposed ^[4] - 9:2, 14:8, 38:14, 60:19 proposing ^[2] - 41:22, 58:22 propriety ^[1] - 84:5 prorated ^[5] - 18:11, 24:7, 24:16, 24:21, 25:7 prosecuting ^[1] - 13:7 Protection ^[1] - 4:23 prove ^[2] - 44:21, 58:8 proved ^[1] - 20:15 provide ^[1] - 72:22</p>
---	---	---	--	---

<p>provided ^[1] - 79:1 providers' ^[1] - 59:21 provides ^[1] - 65:2 providing ^[1] - 60:11 provision ^[8] - 5:6, 13:9, 45:15, 64:10, 69:9, 70:6, 75:4, 81:17 provisions ^[2] - 37:5, 69:14 PSC ^[1] - 81:16 public ^[1] - 50:25 publication ^[1] - 22:23 publicity ^[1] - 71:9 published ^[1] - 16:19 Puerto ^[12] - 26:17, 26:18, 28:25, 29:15, 30:7, 30:9, 30:10, 30:14, 30:17, 30:20, 80:22, 80:23 punitive ^[1] - 41:17 purported ^[1] - 49:23 purposes ^[4] - 6:14, 6:23, 7:6, 62:15 pursuant ^[3] - 9:11, 37:7, 81:24 pursue ^[1] - 31:9 pursuing ^[1] - 66:11 Purto ^[1] - 30:3 push ^[1] - 69:25 pushing ^[1] - 34:5 put ^[15] - 10:1, 13:17, 27:21, 41:5, 41:13, 45:15, 60:23, 63:1, 73:9, 73:23, 74:5, 76:11, 86:19, 90:21 putting ^[2] - 21:16, 77:1</p>	<p>rate ^[3] - 19:7, 19:9, 27:16 rates ^[1] - 54:17 rather ^[8] - 8:3, 29:12, 38:2, 43:9, 50:23, 53:8, 71:17, 86:6 Rather ^[1] - 59:1 Re ^[7] - 40:23, 47:18, 47:23, 52:25, 72:15, 72:17, 81:8 re ^[1] - 14:13 reach ^[1] - 23:2 reached ^[1] - 62:14 read ^[1] - 10:9 reading ^[1] - 40:20 real ^[6] - 42:19, 46:8, 46:9, 47:6, 72:10, 75:5 realistic ^[1] - 67:11 realize ^[1] - 34:8 really ^[11] - 37:21, 43:16, 43:22, 70:4, 73:13, 75:12, 78:10, 78:13, 78:14, 78:16, 78:20 reason ^[3] - 5:3, 33:13, 71:8 reasonability ^[1] - 11:21 reasonable ^[6] - 55:11, 59:24, 60:20, 61:3, 63:24, 75:3 reasonableness ^[1] - 12:17 reasons ^[1] - 11:10 rebuttal ^[2] - 59:8, 59:10 receive ^[3] - 8:6, 11:11, 22:11 received ^[16] - 5:23, 6:2, 6:13, 6:24, 7:7, 9:17, 11:23, 12:13, 20:3, 23:7, 23:8, 23:9, 30:8, 30:9, 30:15, 32:25 recent ^[1] - 54:19 recently ^[2] - 21:1, 49:13 recognize ^[4] - 30:14, 55:8, 62:17, 88:9 recognizes ^[1] - 62:20 recollection ^[1] - 38:25 record ^[14] - 4:17, 11:9, 12:7, 12:12, 13:17, 17:7, 32:1, 36:1, 37:13, 47:13, 50:25, 53:24, 69:19, 76:11 records ^[6] - 38:25, 42:2, 50:20, 50:22, 50:24, 87:25 recover ^[1] - 24:1 recovery ^[2] - 44:17,</p>	<p>47:2 reduce ^[1] - 39:20 reduces ^[1] - 43:1 reduction ^[3] - 42:24, 43:6, 43:11 reference ^[2] - 43:24, 68:7 refunds ^[2] - 62:24, 62:25 refused ^[4] - 54:13, 56:18, 58:12, 62:19 refuses ^[1] - 65:16 refusing ^[1] - 59:4 regard ^[5] - 63:3, 67:1, 82:18, 85:20, 87:13 regarding ^[4] - 14:6, 15:18, 16:23, 80:7 Regardless ^[1] - 29:24 regardless ^[3] - 5:2, 28:3, 69:16 rehash ^[1] - 25:1 reimbursed ^[1] - 55:14 reinforce ^[1] - 59:5 rejected ^[1] - 80:19 relate ^[1] - 84:4 related ^[13] - 5:21, 33:5, 40:19, 40:24, 41:4, 41:11, 41:16, 50:10, 51:18, 67:23, 68:2, 79:5 relates ^[2] - 84:3, 84:5 relating ^[2] - 27:17, 31:13 release ^[5] - 27:16, 40:11, 40:16, 41:1, 41:3 released ^[2] - 41:16, 66:13 releases ^[1] - 68:2 releasing ^[2] - 27:17, 67:23 relevant ^[3] - 57:17, 58:11, 58:13 relief ^[9] - 35:6, 37:2, 60:11, 62:7, 63:14, 63:18, 75:13, 87:25 relook ^[1] - 68:16 remainder ^[1] - 37:6 remark ^[1] - 12:22 remarks ^[3] - 20:7, 74:23, 76:23 remedy ^[4] - 43:19, 45:5, 67:24, 70:11 remember ^[2] - 23:16, 38:24 removal ^[2] - 14:21, 14:23 removed ^[2] - 14:23, 15:3 Rennen ^[1] - 37:15 rep ^[1] - 74:25</p>	<p>replied ^[1] - 47:14 report ^[3] - 41:6, 41:13, 42:11 reporter ^[1] - 51:8 reporting ^[5] - 54:16, 56:12, 57:1, 57:7, 57:12 represent ^[4] - 32:2, 79:12, 83:23, 83:24 representation ^[1] - 8:18 representative ^[5] - 15:1, 16:3, 55:3, 63:13, 63:17 representatives ^[1] - 57:15 represented ^[13] - 6:4, 6:5, 8:15, 9:19, 9:25, 10:2, 10:15, 10:23, 11:6, 11:14, 12:9, 49:21, 61:13 represents ^[4] - 7:3, 10:11, 10:21, 10:25 request ^[4] - 15:7, 15:21, 33:10, 58:17 requesting ^[1] - 30:18 requests ^[2] - 30:10, 30:14 require ^[1] - 89:10 required ^[1] - 87:6 requirement ^[1] - 39:9 requirements ^[1] - 50:17 requires ^[1] - 92:6 reschedule ^[1] - 5:20 reserve ^[2] - 7:13, 11:19 resides ^[1] - 9:14 resolution ^[4] - 14:8, 16:24, 17:17 resolve ^[1] - 89:8 resolved ^[7] - 17:2, 34:21, 49:17, 64:8, 88:15, 92:15 resolving ^[3] - 14:13, 25:13, 91:6 respect ^[45] - 12:8, 14:17, 16:13, 17:25, 18:3, 18:17, 18:22, 19:7, 19:14, 20:5, 20:9, 20:18, 20:24, 21:8, 21:11, 22:8, 22:20, 22:23, 23:3, 23:10, 23:21, 24:7, 24:25, 25:20, 28:24, 36:3, 36:25, 37:25, 38:10, 38:21, 40:7, 41:2, 41:3, 45:21, 46:23, 49:4, 52:24, 61:12, 69:5, 69:12, 78:6, 79:14, 79:15, 79:23, 84:11 respectfully ^[1] - 13:15</p>	<p>respond ^[1] - 75:16 response ^[1] - 58:4 responsibility ^[2] - 52:20, 52:22 rest ^[2] - 24:17, 73:10 restricted ^[1] - 23:5 result ^[1] - 21:18 resulted ^[1] - 23:1 retail ^[3] - 18:23, 18:24, 18:25 retain ^[2] - 66:14 retained ^[2] - 16:22, 17:8 retroactive ^[1] - 37:18 return ^[2] - 35:11, 81:20 returned ^[1] - 20:19 reversion ^[2] - 18:18, 80:14 reviewed ^[6] - 5:23, 6:16, 7:10, 15:16, 30:10, 50:24 Rico ^[13] - 26:17, 26:18, 28:25, 29:15, 30:3, 30:7, 30:10, 30:14, 30:17, 30:20, 80:22, 80:23 rid ^[2] - 38:12, 41:21 rights ^[1] - 7:13 Rios ^[2] - 43:24 risk ^[6] - 20:24, 21:5, 37:13, 37:16, 64:2, 70:16 risks ^[3] - 20:22, 37:12, 37:20 road ^[2] - 29:14, 66:1 Robuck ^[2] - 44:4, 44:8 roles ^[1] - 81:12 room ^[2] - 7:9, 28:13 route ^[1] - 13:5 routinely ^[4] - 76:1, 80:13, 80:19 RPC ^[1] - 76:13 rule ^[4] - 64:11, 77:19, 84:23, 86:17 Rule ^[15] - 49:1, 49:7, 50:15, 52:24, 53:5, 75:20, 75:21, 75:22, 76:6, 76:13, 79:24, 79:25, 80:5, 88:2 rules ^[1] - 87:18 Rules ^[1] - 49:5 ruling ^[4] - 15:12, 25:18, 86:2, 86:3 run ^[2] - 70:16, 90:14 runs ^[1] - 71:7 Rust ^[2] - 22:25, 90:8</p>
Q				
<p>qualified ^[1] - 43:6 qualify ^[1] - 32:14 quarter ^[1] - 74:16 questioning ^[1] - 55:4 questions ^[1] - 66:23 quite ^[1] - 21:23 quote ^[1] - 76:12</p>				
R				
<p>raise ^[1] - 66:15 raised ^[2] - 61:24, 76:12 Ramsey ^[1] - 11:4 rata ^[16] - 19:9, 21:12, 39:16, 41:22, 41:23, 42:5, 42:6, 42:14, 42:24, 43:6, 43:11, 45:17, 72:4, 73:10, 74:15</p>				
S				
<p>S-c-h-r-o-e-r ^[1] - 54:2 sabotage ^[1] - 58:19</p>				

Sabraw [2] - 14:14, 16:6 Sadly [1] - 60:2 safe [1] - 56:1 safeguarding [1] - 49:8 sake [1] - 91:23 Sallie [1] - 10:21 sanctions [1] - 87:11 Sasik [3] - 14:10, 15:4, 15:23 satisfy [1] - 55:8 save [4] - 17:19, 39:1, 39:4, 57:3 saw [1] - 22:14 scale [2] - 60:18, 78:22 scaled [1] - 39:18 scenario [1] - 71:2 scheduled [1] - 5:22 SCHROER [18] - 4:7, 4:11, 53:20, 53:23, 54:2, 54:12, 55:21, 56:9, 56:19, 56:22, 57:2, 61:18, 82:10, 82:13, 82:16, 82:21, 82:23, 83:3 Schroer [17] - 4:7, 4:11, 6:6, 11:15, 53:18, 53:24, 54:1, 61:11, 62:13, 63:9, 66:23, 67:4, 67:7, 67:14, 74:22, 75:2 Schroer's [2] - 62:1, 63:23 scope [4] - 40:16, 40:25, 41:14, 86:18 score [2] - 54:15, 60:1 scores [1] - 60:3 Scott [1] - 25:22 screwed [2] - 66:10, 66:12 se [9] - 7:3, 9:19, 9:20, 31:16, 31:18, 31:19, 41:6, 61:13, 61:15 seal [1] - 22:13 Sears [2] - 44:3, 44:8 seated [1] - 4:9 Second [1] - 22:23 second [4] - 4:8, 26:16, 32:10, 89:8 Secondly [1] - 54:8 secret [1] - 71:23 Section [4] - 9:12, 89:23, 90:3, 90:4 see [14] - 9:6, 22:13, 29:4, 34:20, 38:15, 41:24, 45:14, 47:4, 71:5, 79:21, 91:18, 92:15, 92:24, 92:25 seem [2] - 37:11, 49:25 sell [1] - 75:8 selling [1] - 82:18	seminole [1] - 53:1 send [1] - 39:13 sense [3] - 49:23, 50:1, 60:17 sent [5] - 8:1, 19:18, 19:25, 20:1, 23:6 sentence [1] - 92:12 separate [4] - 14:21, 15:25, 17:14, 31:13 separately [2] - 36:25, 37:8 September [1] - 23:16 serious [1] - 37:16 served [3] - 26:11, 63:17, 84:21 service [3] - 5:1, 5:2, 14:7 Sesame [1] - 30:11 sessions [1] - 23:12 set [4] - 11:9, 31:13, 39:20, 45:4 settle [3] - 16:25, 59:23, 75:14 settled [6] - 49:18, 56:13, 57:8, 57:13, 62:20, 64:25 settlement [125] - 5:13, 5:16, 5:18, 6:2, 11:10, 11:21, 12:17, 13:10, 13:15, 13:19, 13:22, 13:24, 14:1, 14:5, 17:2, 17:18, 17:21, 17:22, 17:25, 18:12, 18:14, 18:17, 19:10, 21:13, 21:17, 22:5, 22:6, 22:8, 23:2, 23:4, 23:17, 24:19, 25:12, 25:23, 25:24, 26:7, 26:13, 26:22, 27:8, 29:21, 33:4, 34:22, 36:6, 36:21, 37:1, 37:6, 37:9, 40:24, 43:14, 45:14, 45:23, 48:20, 48:22, 48:25, 49:12, 49:22, 50:10, 54:7, 55:8, 55:9, 55:12, 55:17, 55:22, 56:17, 56:24, 57:7, 57:13, 58:5, 58:18, 58:19, 59:16, 59:22, 60:22, 61:2, 61:6, 61:23, 61:25, 62:9, 62:14, 62:15, 62:16, 62:21, 62:23, 63:2, 63:3, 63:14, 63:17, 63:19, 64:4, 64:9, 64:13, 65:2, 65:3, 65:8, 65:17, 67:3, 67:13, 67:19, 67:23, 68:4, 68:5, 68:10, 69:7, 70:9, 71:6, 71:14, 72:9, 74:5, 74:25, 77:17, 89:3, 89:7,	89:16, 89:23, 90:6, 90:12, 91:5, 91:25, 92:5, 92:13 settlements [15] - 19:2, 19:16, 22:3, 22:5, 25:19, 49:13, 62:22, 69:14, 69:20, 69:21, 70:14, 71:4, 72:11, 74:6, 75:7 settling [1] - 23:22 seven [2] - 33:16, 54:15 seventies [1] - 44:24 seventy [1] - 18:6 shall [2] - 37:4, 37:7 share [4] - 42:14, 53:8, 73:3, 82:6 sharing [4] - 53:2, 76:5, 76:13, 81:24 shield [1] - 37:19 shook [1] - 46:25 shot [1] - 89:8 show [7] - 26:14, 29:9, 29:14, 31:3, 42:19, 49:22, 92:14 showed [4] - 27:25, 28:9, 28:18, 69:21 showing [1] - 51:16 shown [1] - 61:12 shows [1] - 11:16 side [4] - 25:10, 27:21, 69:4, 78:11 sides [2] - 5:24, 37:20 sign [1] - 8:23 signed [1] - 28:18 significance [2] - 23:24, 24:5 significant [6] - 14:16, 20:13, 24:8, 46:21, 52:12, 62:25 significantly [1] - 19:1 silent [2] - 27:11, 27:12 Simer [2] - 43:24, 44:11 SIMER [1] - 43:24 similar [5] - 12:23, 25:4, 25:6, 40:3, 57:25 Similarly [1] - 15:23 simple [3] - 38:2, 52:17, 69:23 simpler [1] - 70:5 simplest [1] - 39:16 simplicity [1] - 39:12 simplify [1] - 39:10 simplistic [1] - 71:16 simply [8] - 24:9, 24:24, 26:2, 29:14, 54:21, 70:15, 71:19, 92:12 sit [1] - 74:13 sitting [4] - 79:25, 80:2, 89:10, 91:13	situation [7] - 49:19, 67:15, 81:20, 82:2, 82:24, 88:24 six [3] - 14:18, 20:8, 54:19 size [4] - 18:4, 18:8, 85:1, 86:3 small [2] - 78:17, 81:7 smaller [2] - 24:10, 43:11 smoke [1] - 82:21 society [2] - 57:20, 60:12 sold [3] - 66:1, 75:8, 83:11 sole [1] - 76:14 solely [1] - 78:1 solid [1] - 88:12 sometime [1] - 6:9 Sometimes [1] - 43:17 sometimes [2] - 43:18, 61:14 somewhat [4] - 12:25, 13:20, 19:1, 75:17 somewhere [2] - 17:16, 87:4 sorry [4] - 31:17, 36:16, 68:15, 69:19 sort [4] - 37:23, 71:20, 72:3, 91:4 sound [1] - 69:19 Spanish [3] - 19:25, 20:2, 30:11 spare [1] - 23:23 specific [3] - 21:25, 64:8, 68:3 specifically [3] - 36:21, 52:1, 53:1 spend [2] - 64:1, 76:25 spent [1] - 33:16 spite [2] - 57:20, 59:14 split [1] - 50:16 spoken [1] - 33:12 Sprinkle [1] - 16:13 Sprint [19] - 13:1, 20:19, 22:4, 22:5, 22:8, 22:10, 22:15, 25:6, 40:2, 43:21, 46:25, 50:25, 61:25, 62:22, 63:7, 68:4, 75:10, 78:11, 84:17 Sprint's [4] - 18:7, 18:15, 22:21 squarely [1] - 87:25 stage [1] - 20:10 stages [2] - 13:2, 13:3 stand [4] - 22:22, 49:22, 82:1, 87:13 standing [6] - 6:18, 8:9, 8:11, 8:16, 32:12, 71:12	start [2] - 51:5, 61:21 started [2] - 38:7, 59:12 starts [1] - 88:8 State [13] - 4:22, 7:2, 8:10, 8:14, 14:21, 14:24, 16:6, 16:17, 20:11, 32:1, 41:17, 87:20, 87:21 state [4] - 9:14, 12:7, 67:14, 80:1 states [3] - 37:2, 58:5, 80:1 States [2] - 9:12, 24:14 status [2] - 67:10, 70:1 statutory [2] - 41:17, 42:17 stay [4] - 15:5, 52:5, 52:7 stepped [1] - 72:24 still [12] - 11:16, 20:23, 21:5, 37:15, 46:14, 48:23, 50:12, 65:22, 85:5, 86:14, 91:7, 91:13 stop [1] - 51:6 Stop [1] - 88:4 stories [1] - 71:8 STRANGE [11] - 14:4, 14:20, 17:4, 17:9, 17:13, 19:5, 19:23, 21:11, 78:4, 78:16, 80:12 Strange [14] - 7:7, 13:25, 14:3, 22:1, 23:20, 24:1, 24:8, 33:6, 33:11, 33:23, 72:13, 72:15, 76:18, 78:5 Strange's [1] - 12:25 strangers [1] - 53:9 strategized [1] - 51:2 Street [1] - 30:11 strengths [1] - 17:24 strong [1] - 25:2 stronger [4] - 22:3, 22:20, 22:24, 81:1 struck [1] - 64:7 structural [1] - 49:7 structurally [1] - 49:21 structure [3] - 39:24, 73:8, 78:19 structured [6] - 39:5, 42:24, 43:7, 46:3, 46:22, 53:10 stuff [1] - 51:25 subject [3] - 55:6, 57:15, 60:15 subjected [1] - 54:16 subliminal [1] - 57:23 submission [1] -
--	---	---	---	--

34:25 submit [1] - 9:1 submitted [9] - 4:4, 9:22, 10:8, 33:5, 33:7, 34:4, 55:24, 57:19, 79:19 subscriber [5] - 5:5, 19:8, 23:6, 27:18, 47:7 subscribers [2] - 29:22, 37:24 Subsequent [2] - 5:10, 5:19 substance [1] - 37:21 substantial [9] - 15:7, 16:11, 19:12, 20:2, 20:22, 20:24, 33:17, 34:8, 62:7 substituted [1] - 22:25 success [1] - 13:3 successful [1] - 59:20 sue [2] - 65:19, 66:1 sued [1] - 77:21 suffered [1] - 78:9 suffice [1] - 19:15 Suffice [1] - 20:7 suggest [4] - 26:2, 68:15, 68:21, 88:11 suggested [1] - 27:19 suggesting [6] - 63:15, 70:4, 70:22, 87:12, 89:15, 89:19 suggestion [4] - 69:24, 71:15, 71:16, 71:18 suit [3] - 55:22, 56:3, 65:25 sum [1] - 60:13 summaries [1] - 50:23 summarize [1] - 16:7 summary [1] - 15:19 sums [1] - 19:12 Superior [3] - 4:2, 32:5, 63:8 support [2] - 13:23, 17:21 supporting [2] - 13:9, 13:10 supposed [1] - 34:2 Supreme [4] - 16:18, 21:1, 37:14, 51:24 surprise [2] - 52:8, 75:2 surprised [1] - 75:17 system [2] - 22:18, 87:18	23:4, 25:4, 25:6, 29:2, 31:14, 40:2, 62:22, 63:7, 71:13, 75:9 T-Mobile's [1] - 18:7 talks [3] - 27:16, 47:23, 88:11 tangential [1] - 77:20 taxable [1] - 50:1 technology [1] - 44:25 telephone [6] - 14:7, 14:13, 16:5, 27:15, 28:8, 29:12 ten [8] - 7:8, 33:22, 38:24, 46:10, 46:12, 83:12, 86:22, 90:25 term [5] - 5:2, 27:17, 28:21, 78:18, 78:20 termination [6] - 4:19, 13:12, 24:2, 46:13, 67:8, 67:18 terms [8] - 13:22, 18:12, 23:25, 24:22, 27:13, 27:17, 65:1, 73:7 testified [1] - 38:5 THE [176] - 4:6, 4:8, 4:13, 6:19, 6:21, 7:15, 7:17, 7:19, 8:5, 8:22, 8:25, 9:1, 9:5, 10:7, 10:18, 10:21, 12:5, 12:11, 14:3, 14:19, 17:3, 17:5, 17:11, 19:3, 19:22, 21:10, 21:20, 26:18, 26:21, 27:1, 27:7, 27:11, 28:23, 29:18, 29:24, 30:2, 30:8, 30:17, 30:23, 31:8, 31:16, 31:18, 31:20, 31:25, 32:7, 32:10, 32:14, 32:18, 32:22, 33:2, 34:14, 34:18, 35:12, 35:17, 35:19, 35:23, 36:5, 36:8, 36:10, 36:12, 36:14, 36:16, 36:19, 38:19, 38:22, 40:14, 40:17, 41:10, 41:23, 44:1, 44:5, 44:7, 44:9, 44:13, 44:15, 45:11, 45:13, 45:19, 45:22, 46:1, 48:5, 51:3, 51:5, 51:8, 51:19, 52:10, 52:14, 53:11, 53:13, 53:21, 54:1, 54:11, 56:4, 56:17, 56:20, 56:23, 61:11, 61:19, 62:2, 62:17, 63:5, 64:14, 64:18, 64:21, 64:23, 65:6, 65:12, 65:14, 65:22, 66:3, 66:8, 66:20,	66:25, 67:3, 68:6, 68:13, 68:16, 68:22, 69:2, 70:25, 71:15, 72:6, 72:12, 72:16, 72:18, 73:6, 73:13, 73:16, 73:22, 74:13, 74:20, 78:15, 80:6, 82:9, 82:12, 82:14, 82:20, 82:22, 83:2, 83:16, 83:19, 83:23, 84:4, 84:7, 84:9, 84:13, 85:4, 85:8, 85:10, 85:13, 85:25, 86:10, 86:14, 86:21, 86:24, 87:22, 88:4, 88:21, 89:14, 89:19, 89:24, 90:3, 90:14, 90:17, 90:22, 91:2, 91:7, 91:15, 91:18, 91:20, 91:23, 92:3, 92:9, 92:18, 92:20, 92:24 themselves [2] - 81:24, 82:2 theory [2] - 13:8, 74:10 thereafter [1] - 11:13 Thereafter [2] - 5:13, 11:12 therefore [3] - 7:24, 57:24, 63:4 Therefore [2] - 59:22, 84:18 thinking [1] - 58:22 third [2] - 46:6, 86:13 thousand [1] - 42:23 thousands [4] - 55:5, 58:8, 60:11 threatened [1] - 59:18 three [7] - 10:2, 17:16, 34:12, 34:19, 81:17, 81:18, 82:3 threshold [2] - 43:4, 48:24 throughout [1] - 61:13 Throughout [1] - 68:6 ticket [2] - 70:20, 73:4 Tiffaney [1] - 22:24 timely [1] - 33:7 timing [3] - 89:6, 89:13, 90:5 today [33] - 5:22, 6:6, 6:8, 6:25, 7:12, 8:3, 9:20, 9:21, 10:10, 11:6, 11:22, 12:8, 12:10, 25:9, 26:14, 28:10, 28:14, 33:9, 35:7, 35:25, 36:20, 37:11, 38:5, 44:25, 53:17, 59:22, 63:11, 64:2, 67:7, 69:11, 76:20, 84:22, 88:5 Today [2] - 8:24, 23:1	together [3] - 21:7, 21:16, 33:24 tongue [1] - 57:10 took [1] - 15:17 total [3] - 17:16, 77:22, 83:1 totally [1] - 91:13 touch [1] - 67:12 touched [1] - 79:15 touchstone [1] - 75:21 towards [3] - 57:21, 57:23, 60:1 track [1] - 28:19 traditional [1] - 80:12 traditionally [2] - 79:2, 80:24 transfer [1] - 87:18 transferred [2] - 15:2, 87:17 translates [1] - 30:13 travel [1] - 8:4 traveled [2] - 48:3, 48:11 treatise [1] - 76:1 treatment [1] - 57:25 tremendous [1] - 57:20 trial [1] - 5:1 tricky [1] - 21:6 tried [2] - 7:21, 78:23 triggered [1] - 90:9 trip [1] - 33:19 trouble [1] - 81:5 troubling [1] - 81:4 true [3] - 58:7, 68:9, 73:11 try [6] - 33:10, 65:9, 81:5, 82:5, 87:3, 89:9 trying [3] - 23:22, 75:14 Turner [2] - 10:14, 10:21 turns [2] - 85:14, 85:20 twisted [1] - 57:10 two [26] - 6:10, 6:11, 10:25, 11:5, 14:21, 15:17, 15:24, 16:23, 16:25, 17:13, 17:14, 17:16, 19:6, 19:10, 22:2, 23:12, 23:15, 24:13, 25:5, 25:15, 25:19, 32:20, 36:2, 36:22, 37:3, 75:19 two-year [2] - 19:6, 19:10 type [7] - 15:20, 26:23, 27:1, 50:16, 52:25, 53:2, 88:10 types [4] - 21:14, 37:20, 79:3, 80:19 typical [1] - 40:4	U U.S [3] - 21:1, 37:14, 87:18 ultimate [1] - 76:3 ultimately [12] - 5:7, 14:22, 15:6, 15:20, 16:2, 16:9, 16:22, 17:2, 17:10, 17:18, 76:4, 87:8 Ultimately [1] - 15:2 umbrella [1] - 13:5 unclaimed [1] - 43:17 unclear [1] - 41:1 uncommon [2] - 69:13, 69:18 unconscionable [1] - 54:17 Under [1] - 65:1 under [24] - 14:1, 22:13, 25:11, 38:6, 39:22, 40:24, 41:9, 42:18, 47:18, 47:23, 49:5, 50:15, 59:22, 62:21, 79:24, 80:4, 80:5, 84:13, 84:18, 84:19, 87:17, 88:22, 90:5 underlying [1] - 28:21 understood [2] - 31:10, 68:12 undisclosed [2] - 50:14, 84:11 undistributed [1] - 46:4 unexceptional [2] - 81:25 Unfortunately [1] - 57:20 unfortunately [1] - 49:12 unique [6] - 12:25, 13:6, 18:1, 24:11, 58:7, 68:10 United [2] - 9:12, 24:13 unless [4] - 21:25, 23:23, 57:5, 86:17 unquote [1] - 76:13 unreasonable [5] - 45:24, 46:3, 46:7, 47:9, 47:11 unrelenting [1] - 54:18 unusual [2] - 57:5, 69:15 up [32] - 9:5, 11:16, 18:24, 19:3, 22:1, 23:19, 26:14, 28:18, 33:19, 39:20, 40:12, 40:13, 41:9, 45:4, 50:2, 51:17, 60:13, 66:10, 66:12, 66:18,
T				
T-Mobile [18] - 13:1, 18:14, 22:5, 22:6, 22:17, 22:18, 22:23,				

69:18, 69:20, 69:21, 70:7, 70:11, 70:15, 71:21, 85:10, 87:10, 88:13, 90:7, 90:12 upfront [1] - 49:19 uphold [1] - 60:14 USA [2] - 23:1 usurp [1] - 87:3 usurped [1] - 59:18	W	23:13 won [1] - 52:2 word [1] - 70:17 words [1] - 82:25 works [1] - 43:3 world [1] - 29:20 worth [2] - 19:12, 34:9 write [3] - 90:11, 91:12, 92:17 Writs [4] - 76:16, 77:2, 77:25, 87:7 written [1] - 52:18 wrote [3] - 21:23, 52:2, 63:21
V	wait [6] - 29:18, 32:7, 86:9 Wait [6] - 4:8, 26:21, 29:18, 32:7, 40:14, 44:5 waiting [2] - 53:19, 86:2 waive [4] - 62:12, 65:5, 65:9, 65:10 Waldmann [4] - 14:9, 14:17, 14:19, 20:17 wall [1] - 27:24 Walsh [1] - 10:22 wants [5] - 31:8, 61:22, 62:13, 62:18, 67:4 Washington [1] - 16:12 watching [1] - 25:4 ways [5] - 36:2, 45:3, 73:8, 74:14, 74:17 website [1] - 45:4 week [6] - 8:1, 8:4, 33:22, 34:20, 76:20, 78:1 Weekend [1] - 23:1 weeks [2] - 17:16, 54:20 Weinstein [4] - 10:15, 10:16, 10:17, 10:20 Weiss [19] - 46:15, 46:16, 47:22, 50:7, 50:12, 50:25, 51:14, 51:21, 52:4, 52:6, 77:12, 79:16, 84:16, 85:2, 87:20 welcome [1] - 59:7 well-versed [1] - 60:15 whole [7] - 46:17, 49:24, 55:14, 55:17, 58:5, 69:7, 80:25 Wifi [1] - 27:23 William [1] - 21:22 willing [2] - 29:7, 33:23 windfall [6] - 40:10, 41:21, 42:16, 73:1, 73:6, 73:22 Wireless [1] - 51:15 wireless [9] - 5:1, 27:14, 27:21, 27:23, 28:6, 28:8, 29:3, 29:12, 36:3 withdraw [3] - 30:25, 31:4, 76:24 withdrawn [2] - 25:21, 31:6 Wolfson [8] - 16:22, 17:3, 17:6, 17:7, 17:8, 17:12, 21:15,	Y
vacation [2] - 35:11, 35:16 validity [1] - 42:2 valuable [1] - 76:8 value [4] - 18:23, 18:24, 18:25, 25:2 various [8] - 13:2, 13:3, 14:24, 21:8, 21:11, 55:1 vast [2] - 13:6, 67:17 vehicle [1] - 87:1 Velez [2] - 26:17, 28:25 Velez-Colon [2] - 26:17, 28:25 Verdiramo [3] - 10:3, 10:24 Verizon [12] - 18:8, 18:16, 55:3, 59:13, 59:14, 59:16, 62:22, 63:7, 63:13, 74:25, 75:1 versed [1] - 60:15 Versus [2] - 44:7, 44:8 versus [5] - 14:9, 14:10, 14:15, 20:19, 51:14 vice [8] - 4:4, 6:11, 6:22, 6:25, 7:6, 7:8, 8:6, 8:17 vicious [1] - 60:6 victim [1] - 54:17 victory [2] - 20:25, 51:24 Video [1] - 46:14 view [1] - 24:6 viewed [1] - 23:20 Vincent [2] - 10:3, 10:24 vindicated [1] - 55:5 violate [1] - 4:21 violation [1] - 49:7 vis [4] - 16:7, 48:15 vis-a-vis [2] - 16:7, 48:15 voluntarily [2] - 25:21, 26:1 vs [3] - 43:24, 44:3, 45:8	Z	year [2] - 19:6, 19:10 years [16] - 14:5, 14:18, 16:8, 16:14, 16:21, 20:8, 21:15, 33:16, 38:24, 46:10, 46:13, 49:20, 54:15, 67:9, 75:7, 82:6 York [2] - 41:18, 42:18 young [1] - 26:17
		zero [1] - 48:24